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Counsel for Highland Capital Management, L.P.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

vs.

HIGHLAND CAPITAL MANAGEMENT FUND
ADVISORS, L.P.,

Defendant.

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Adv. Proc. No. 21-3004-sgj

Case No. 3:21-cv-00881-X

**APPENDIX IN SUPPORT OF HIGHLAND CAPITAL
MANAGEMENT, L.P.'S OBJECTION AND RESPONSE TO
OBJECTION TO ORDER DENYING MOTION TO AMEND ANSWER**

<u>Ex.</u>	<u>Description</u>	<u>Appx. #</u>
1	Original Complaint against HCMFA, Adv. Pro. No. 21-3004, D.I. 1, (Bankr. N.D. Tex. January 22, 2021)	1-21
5	Defendant's Original Answer, Adv. Pro. No. 21-3004, D.I. 6, (Bankr. N.D. Tex. March 1, 2021)	22-29
34	Highland's Consolidated Financial Statements, dated December 31, 2018	30-76
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36	Email string re 15(c) Follow up (10/2/21 – 10/6/21)	79-83
45	HCMFA's Consolidated Financial Statements and Supplemental Information (December 31, 2018) (FILED UNDER SEAL)	84
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214	Report and Recommendation to District Court Proposing that it: (A) Grant Defendant's Motion to Withdraw the Reference at Such Time as Bankruptcy Court Certifies that Action is Trial Ready; and (B) Defer	599-611

<u>Ex.</u>	<u>Description</u>	<u>Appx. #</u>
	Pretrial Matters to Bankruptcy Court, Adv. Pro. No. 21-3004, D.I. 50, (Bankr. N.D. Tex. July 8, 2021)	
215	Motion for Leave to Amend Answer, Adv. Pro. No. 21-3004, D.I. 32, (Bankr. N.D. Tex. May 22, 2021)	612-661
216	Defendant's Amended Answer, Adv. Pro. No. 21-3004, D.I. 48, (Bankr. N.D. Tex. July 6, 2021)	662-671
217	Defendant's Second Motion for Leave to Amend Answer and Brief in Support Thereof, Adv. Pro. No. 21-3004, D.I. 82, (Bankr. N.D. Tex. November 30, 2021)	672-699
218	Second Declaration of Dennis C. Sauter, Adv. Pro. No. 21-3004, D.I. 83, (Bankr. N.D. Tex. November 30, 2021)	700-752
219	January 10, 2022 Hearing Transcript	753-897
220	Order Denying Defendant's Second Motion for Leave to Amend Answer, Adv. Pro. No. 21-3004, D.I. 123, (Bankr. N.D. Tex. January 13, 2022)	898-901

Dated: February 17, 2022.

PACHULSKI STANG ZIEHL & JONES LLP

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/s/ Zachery Z. Annable

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Counsel for Highland Capital Management, L.P.

EXHIBIT 1

PACHULSKI STANG ZIEHL & JONES LLP
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Counsel for Highland Capital Management, L.P.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:	§	
	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., ¹	§	
	§	Case No. 19-34054-sgj11
Debtor.	§	
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HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff,	§	Adversary Proceeding No.
	§	
vs.	§	<hr/>
	§	
HIGHLAND CAPITAL MANAGEMENT FUND	§	
ADVISORS, L.P.,	§	
	§	
Defendant.	§	

¹ The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.



**COMPLAINT FOR (I) BREACH OF CONTRACT
AND (II) TURNOVER OF PROPERTY OF THE DEBTOR'S ESTATE**

Plaintiff, Highland Capital Management, L.P., the above-captioned debtor and debtor-in-possession (the "Debtor") in the above-captioned chapter 11 case and the plaintiff in the above-captioned adversary proceeding (the "Adversary Proceeding"), by its undersigned counsel, as and for its complaint (the "Complaint") against defendant, Highland Capital Management Fund Advisors, L.P. ("HCMFA" or "Defendant"), alleges upon knowledge of its own actions and upon information and belief as to other matters as follows:

PRELIMINARY STATEMENT

1. The Debtor brings this action against HCMFA as a result of HCMFA's defaults under two promissory notes executed by HCMFA in favor of the Debtor in the aggregate original principal amount of \$7,400,000 and payable upon the Debtor's demand. Despite due demand, HCMFA has failed to pay amounts due and owing under the notes and the accrued but unpaid interest thereon.

2. Through this Complaint, the Debtor seeks (a) damages from HCMFA in an amount equal to (i) the aggregate outstanding principal due under the Notes (as defined below), plus (ii) all accrued and unpaid interest thereon until the date of payment, plus (iii) an amount equal to the Debtor's costs of collection (including all court costs and reasonable attorneys' fees and expenses, as provided for in the Notes), and (b) turnover by HCMFA to the Debtor of the foregoing amounts.

JURISDICTION AND VENUE

3. This adversary proceeding arises in and relates to the Debtor's case pending before the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Court") under chapter 11 of the Bankruptcy Code.

4. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.

5. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b), and, pursuant to Rule 7008 of the Bankruptcy Rules, the Debtor consents to the entry of a final order by the Court in the event that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

6. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

THE PARTIES

7. The Debtor is a limited liability partnership formed under the laws of Delaware with a business address at 300 Crescent Court, Suite 700, Dallas, Texas 75201.

8. Upon information and belief, HCMFA is a limited partnership with offices located in Dallas, Texas and is organized under the laws of the state of Delaware.

CASE BACKGROUND

9. On October 16, 2019, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “Delaware Court”), Case No. 19-12239 (CSS) (the “Highland Bankruptcy Case”).

10. On October 29, 2019, the U.S. Trustee in the Delaware Court appointed an Official Committee of Unsecured Creditors (the “Committee”) with the following members: (a) Redeemer Committee of Highland Crusader Fund, (b) Meta-e Discovery, (c) UBS Securities LLC and UBS AG London Branch, and (d) Acis LP and Acis GP.

11. On December 4, 2019, the Delaware Court entered an order transferring venue of the Highland Bankruptcy Case to this Court [Docket No. 186].²

12. The Debtor has continued in the possession of its property and has continued to operate and manage its business as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this chapter 11 case.

STATEMENT OF FACTS

A. The HCMFA Notes

13. HCMFA is the maker under a series of promissory notes in favor of the Debtor.

14. Specifically, on May 2, 2019, HCMFA executed a promissory note in favor of the Debtor, as payee, in the original principal amount of \$2,400,000 (“HCMFA’s First Note”). A true and correct copy of HCMFA’s First Note is attached hereto as **Exhibit 1**.

15. On May 3, 2019, HCMFA executed a promissory note in favor of the Debtor, as payee, in the original principal amount of \$5,000,000 (“HCMFA’s Second Note,” and together with HCMFA’s First Note, the “Notes”). A true and correct copy of HCMFA’s Second Note is attached hereto as **Exhibit 2**.

16. Section 2 of each Note provides: “**Payment of Principal and Interest**. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.”

17. Section 4 of each Note provides:

Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of the Payee in exercising any right, power, or privilege hereunder shall operate as a waiver hereof.

² All docket numbers refer to the main docket for the Highland Bankruptcy Case maintained by this Court.

18. Section 6 of each Note provides:

Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

B. HCMFA's Default under Each Note

19. By letter dated December 3, 2020, the Debtor made demand on HCMFA for payment under the Notes by December 11, 2020 (the "Demand Letter"). A true and correct copy of the Demand Letter is attached hereto as **Exhibit 3**. The Demand Letter provided:

By this letter, Payee is demanding payment of the accrued interest and principal due and payable on the Notes in the aggregate amount of \$7,687,653.07, which represents all accrued interest and principal through and including December 11, 2020.

Payment is due on December 11, 2020, and failure to make payment in full on such date will constitute an event of default under the Notes.

Demand Letter (emphasis in the original).

20. Despite the Debtor's demand, HCMFA did not pay all or any portion of the amounts demanded by the Debtor on December 11, 2020 or at any time thereafter.

21. As of December 11, 2020, there was an outstanding principal amount of \$2,457,517.15 on HCMFA's First Note and accrued but unpaid interest in the amount of \$35,884.46, resulting in a total outstanding amount as of that date of \$2,493,401.61.

22. As of December 11, 2020, there was an outstanding principal balance of \$5,119,827.40 on HCMFA's Second Note and accrued but unpaid interest in the amount of \$74,424.05, resulting in a total outstanding amount as of that date of \$5,194,251.45.

23. Thus, as of December 11, 2020, the total outstanding principal and accrued but unpaid interest due under the Notes was \$7,687,653.07

24. Pursuant to Section 4 of each Note, each Note is in default and is currently due and payable.

FIRST CLAIM FOR RELIEF
(For Breach of Contract)

25. The Debtor repeats and re-alleges the allegations in each of the foregoing paragraphs as though fully set forth herein.

26. Each Note is a binding and enforceable contract.

27. HCMFA breached each Note by failing to pay all amounts due to the Debtor upon the Debtor's demand.

28. Pursuant to each Note, the Debtor is entitled to damages from HCMFA in an amount equal to (i) the aggregate outstanding principal due under each Note, plus (ii) all accrued and unpaid interest thereon until the date of payment, plus (iii) an amount equal to the Debtor's costs of collection (including all court costs and reasonable attorneys' fees and expenses) for HCMFA's breach of its obligations under each of the Notes.

29. As a direct and proximate cause of HCMFA's breach of each Note, the Debtor has suffered damages in the total amount of at least \$7,687,653.07 as of December 11, 2020, plus an amount equal to all accrued but unpaid interest from that date, plus the Debtor's cost of collection.

SECOND CLAIM FOR RELIEF
(Turnover by HCMFA Pursuant to 11 U.S.C. § 542(b))

30. The Debtor repeats and re-alleges the allegations in each of the foregoing paragraphs as though fully set forth herein.

31. HCMFA owes the Debtor an amount equal to (i) the aggregate outstanding principal due under each Note, plus (ii) all accrued and unpaid interest thereon until the date of payment, plus (iii) an amount equal to the Debtor's costs of collection (including all court costs

and reasonable attorneys' fees and expenses) for HCMFA's breach of its obligations under each of the Notes.

32. Each Note is property of the Debtor's estate, and the amounts due under each Note are matured and payable upon demand.

33. HCMFA has not paid the amounts due under each Note to the Debtor.

34. The Debtor has made demand for the turnover of the amounts due under each Note.

35. As of the date of filing of this Complaint, HCMFA has not turned over to the Debtor all or any of the amounts due under each of the Notes.

36. The Debtor is entitled to the turnover of all amounts due under each of the Notes.

WHEREFORE, the Debtor prays for judgment as follows:

- (i) On its First Claim for Relief, damages in an amount to be determined at trial, including, among other things, (a) the aggregate outstanding principal due under each Note, plus (b) all accrued and unpaid interest thereon until the date of payment, plus (c) an amount equal to the Debtor's costs of collection (including all court costs and reasonable attorneys' fees and expenses);
- (ii) On its Second Claim for Relief, ordering turnover by HCMFA to the Debtor of an amount equal to (a) the aggregate outstanding principal due under each Note, plus (b) all accrued and unpaid interest thereon until the date of payment, plus (c) an amount equal to the Debtor's costs of collection (including all court costs and reasonable attorneys' fees and expenses); and
- (iii) Such other and further relief as this Court deems just and proper.

Dated: January 22, 2021.

PACHULSKI STANG ZIEHL & JONES LLP

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-and-

HAYWARD PLLC

/s/ Zachery Z. Annable

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Counsel for Highland Capital Management, L.P.

EXHIBIT 1

EXHIBIT 1

PROMISSORY NOTE

\$2,400,000.00

May 2, 2019

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP. (“**Maker**”) promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP (“**Payee**”), in legal and lawful tender of the United States of America, the principal sum of TWO MILLION FOUR HUNDRED THOUSAND and 00/100 Dollars (\$2,400,000.00), together with interest, on the terms set forth below (the “**Note**”). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the short-term “**applicable federal rate**” (2.39%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys’ Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys’ fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:



FRANK WATERHOUSE

EXHIBIT 2

EXHIBIT 2

PROMISSORY NOTE

\$5,000,000.00

May 3, 2019

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP. (“**Maker**”) promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP (“**Payee**”), in legal and lawful tender of the United States of America, the principal sum of FIVE MILLION and 00/100 Dollars (\$5,000,000.00), together with interest, on the terms set forth below (the “**Note**”). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the short-term “**applicable federal rate**” (2.39%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys’ Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys’ fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:



FRANK WATERHOUSE

EXHIBIT 3

EXHIBIT 3

HIGHLAND CAPITAL MANAGEMENT, L.P.

December 3, 2020

Highland Capital Management Fund Advisors, LP
c/o Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: Frank Waterhouse, CFO

Re: Demand on Promissory Notes:

Dear Mr. Waterhouse,

Highland Capital Management Fund Advisors, LP (“Maker”) entered into the following promissory notes (collectively, the “Notes”), among others,¹ in favor of Highland Capital Management, L.P. (“Payee”):

Date Issued	Original Principal Amount	Outstanding Principal Amount (12/11/20)	Accrued But Unpaid Interest (12/11/20)	Total Amount Outstanding (12/11/20)
5/2/2019	\$2,400,000	\$2,457,517.15	\$35,884.46	\$2,493,401.61
5/3/2019	\$5,000,000	\$5,119,827.40	\$74,424.05	\$5,194,251.45
TOTALS	\$7,400,000	\$7,577,344.55	\$110,308.52	\$7,687,653.07

As set forth in Section 2 of each of the Notes, accrued interest and principal is due and payable upon the demand of Payee. By this letter, Payee is demanding payment of the accrued interest and principal due and payable on the Notes in the aggregate amount of \$7,687,653.07, which represents all accrued and unpaid interest and principal through and including December 11, 2020.

Payment is due on December 11, 2020, and failure to make payment in full on such date will constitute an event of default under the Notes.

Payments on the Notes must be made in immediately available funds. Payee’s wire information is attached hereto as **Appendix A**.

Nothing contained herein constitutes a waiver of any rights or remedies of Payee under the Notes or otherwise and all such rights and remedies, whether at law, equity, contract, or otherwise, are

¹ Maker is also obligated to pay amounts due under promissory notes issued in favor of Payee prior to April 15, 2019. Pursuant to that certain *Acknowledgment from HCMLP*, dated as of April 15, 2019, Payee agreed not to demand payment on such amounts until May 31, 2021. Payee reserves all rights with respect to such amounts.

expressly reserved. Interest, including default interest if applicable, on the Notes will continue to accrue until the Notes are paid in full. Any such interest will remain the obligation of Maker.

Sincerely,

/s/ James P. Seery, Jr.

James P. Seery, Jr.
Highland Capital Management, L.P.
Chief Executive Officer/Chief Restructuring Officer

cc: Fred Caruso
James Romey
Jeffrey Pomerantz
Ira Kharasch
Gregory Demo
DC Sauter

Appendix A


ABA #: 322070381
Bank Name: East West Bank
Account Name: Highland Capital Management, LP
Account #: 5500014686

Case 21-03004-sgj Doc 1-4 Filed 01/22/21 Entered 01/22/21 17:54:38 Page 1 of 2

B1040 (FORM 1040) (12/15)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)
PLAINTIFFS Highland Capital Management, L.P.	DEFENDANTS Highland Capital Management Fund Advisors, L.P.	
ATTORNEYS (Firm Name, Address, and Telephone No.) Hayward LLP 10501 N. Central Expressway, Suite 106 Dallas, Texas 75231 Tel.: (972) 755-7100	ATTORNEYS (If Known) Munsch Hardt Kopf & Harr, P.C. 500 N. Akard Street, Suite 3800 Dallas, Texas 75201 Tel.: (214) 855-7500	
PARTY (Check One Box Only) <input checked="" type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee	PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input checked="" type="checkbox"/> Other <input type="checkbox"/> Trustee	
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) Count 1: Breach of contract; Count 2: Turnover pursuant to 11 U.S.C. 542		
NATURE OF SUIT (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)		
<div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> <p>FRBP 7001(1) – Recovery of Money/Property</p> <p><input checked="" type="checkbox"/> 11-Recovery of money/property - §542 turnover of property</p> <p><input type="checkbox"/> 12-Recovery of money/property - §547 preference</p> <p><input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer</p> <p><input type="checkbox"/> 14-Recovery of money/property - other</p> <p>FRBP 7001(2) – Validity, Priority or Extent of Lien</p> <p><input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property</p> <p>FRBP 7001(3) – Approval of Sale of Property</p> <p><input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h)</p> <p>FRBP 7001(4) – Objection/Revocation of Discharge</p> <p><input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e)</p> <p>FRBP 7001(5) – Revocation of Confirmation</p> <p><input type="checkbox"/> 51-Revocation of confirmation</p> <p>FRBP 7001(6) – Dischargeability</p> <p><input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims</p> <p><input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud</p> <p><input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny</p> <p style="text-align: center;">(continued next column)</p> </div> <div style="width: 48%;"> <p>FRBP 7001(6) – Dischargeability (continued)</p> <p><input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support</p> <p><input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury</p> <p><input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan</p> <p><input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support)</p> <p><input type="checkbox"/> 65-Dischargeability - other</p> <p>FRBP 7001(7) – Injunctive Relief</p> <p><input type="checkbox"/> 71-Injunctive relief – imposition of stay</p> <p><input type="checkbox"/> 72-Injunctive relief – other</p> <p>FRBP 7001(8) Subordination of Claim or Interest</p> <p><input type="checkbox"/> 81-Subordination of claim or interest</p> <p>FRBP 7001(9) Declaratory Judgment</p> <p><input type="checkbox"/> 91-Declaratory judgment</p> <p>FRBP 7001(10) Determination of Removed Action</p> <p><input type="checkbox"/> 01-Determination of removed claim or cause</p> <p>Other</p> <p><input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i></p> <p><input checked="" type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)</p> </div> </div>		
<input checked="" type="checkbox"/> Check if this case involves a substantive issue of state law	<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23	
<input type="checkbox"/> Check if a jury trial is demanded in complaint	Demand \$7,687,653.07 plus interest, fees, and expenses	
Other Relief Sought		

B1040 (FORM 1040) (12/15)

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Highland Capital Management, L.P.		BANKRUPTCY CASE NO. 19-34054-sgj11
DISTRICT IN WHICH CASE IS PENDING Northern District of Texas	DIVISION OFFICE Dallas	NAME OF JUDGE Stacey G. C. Jernigan
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) 		
DATE January 22, 2021		PRINT NAME OF ATTORNEY (OR PLAINTIFF) Zachery Z. Annable

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 1040, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 1040 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

EXHIBIT 5

*Counsel for Highland Capital Management Fund
Advisors, L.P.*

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Julian P. Vasek, Esq.
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*Counsel for Highland Capital Management Fund
Advisors, L.P.*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Chapter 11
	§	
Debtor.	§	Case No. 19-34054-sgj11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Adv. No. 21-03004
	§	
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.	§	
	§	
Defendant.	§	

DEFENDANT'S ORIGINAL ANSWER

COMES NOW Highland Capital Management Fund Advisors, L.P. (the “Defendant”), the defendant in the above-styled and numbered adversary proceeding (the “Adversary Proceeding”) filed by Highland Capital Management, L.P. (the “Plaintiff”), and files this its *Defendant’s Original Answer* (the “Answer”), responding to the *Complaint for (I) Breach of Contract and (II)*

DEFENDANT'S ORIGINAL ANSWER



D-CNL002868

Appx. 00023

Turnover of Property of the Debtor's Estate (the "Complaint"). Where an allegation in the Complaint is not expressly admitted in this Answer, it is denied.

PRELIMINARY STATEMENT

1. The first sentence of ¶ 1 sets forth the Plaintiff's objective in bringing the Complaint and does not require a response. To the extent it contains factual allegations, they are denied. The second sentence contains a legal conclusion that does not require a response. To the extent it contains factual allegations, they are denied.

2. Paragraph 2 contains a summary of the relief the Plaintiff seeks and does not require a response. To the extent it contains factual allegations, they are denied.

JURISDICTION AND VENUE

3. The Defendant admits that this Adversary Proceeding relates to the Plaintiff's bankruptcy case but denies any implication that this fact confers Constitutional authority on the Bankruptcy Case to adjudicate this dispute. Any allegations in ¶ 3 not expressly admitted are denied.

4. The Defendant admits that the Court has statutory (but not Constitutional) jurisdiction to hear this Adversary Proceeding. Any allegations in ¶ 4 not expressly admitted are denied.

5. The Defendant denies that a breach of contract claim is core. The Defendant denies that a § 542(b) turnover proceeding is the appropriate mechanism to collect a contested debt. The Defendant admits that a § 542(b) turnover proceeding is statutorily core but denies that it is Constitutionally core under *Stern v. Marshall*. The Defendant does not consent to the Bankruptcy Court entering final orders or judgment in this Adversary Proceeding. Any allegations in ¶ 5 not expressly admitted are denied.

6. The Defendant admits ¶ 6 of the Complaint.

THE PARTIES

7. The Defendant admits ¶ 7 of the Complaint.

8. The Defendant admits ¶ 8 of the Complaint.

CASE BACKGROUND

9. The Defendant admits ¶ 9 of the Complaint.

10. The Defendant admits ¶ 10 of the Complaint.

11. The Defendant admits ¶ 11 of the Complaint.

12. The Defendant admits ¶ 12 of the Complaint.

STATEMENT OF FACTS

A. The HCMFA Notes

13. The Defendant admits that it has executed at least one promissory note under which the Debtor is the payee. Any allegations in ¶ 13 not expressly admitted are denied.

14. The Defendant admits ¶ 14 of the Complaint.

15. The Defendant admits ¶ 15 of the Complaint.

16. The Defendant denies ¶ 16 of the Complaint. The document speaks for itself and the quote set forth in ¶ 16 is not verbatim.

17. The Defendant denies ¶ 17 of the Complaint. The document speaks for itself and the quote set forth in ¶ 17 is not verbatim.

18. The Defendant admits ¶ 18 of the Complaint.

B. HCMFA's Default under Each Note

19. The Defendant admits that Exhibit 3 to the Complaint (the "Demand Letter") is a true and correct copy of what it purports to be and that the document speaks for itself. To the extent ¶ 19 of the Complaint asserts a legal conclusion, no response is required, and it is denied. To the extent not expressly admitted, ¶ 19 of the Complaint is denied.

20. To the extent ¶ 20 of the Complaint asserts a legal conclusion, no response is necessary, and it is denied. The Defendant otherwise admits ¶ 20 of the Complaint.

21. The Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 21 of the Complaint and therefore denies the same.

22. The Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 22 of the Complaint and therefore denies the same.

23. The Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 23 of the Complaint and therefore denies the same.

24. The Defendant denies ¶ 24 of the Complaint.

FIRST CLAIM FOR RELIEF
(For Breach of Contract)

25. Paragraph 25 of the Complaint is a sentence of incorporation that does not require a response. All prior denials are incorporated herein by reference.

26. Paragraph 26 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 26 of the Complaint and therefore denies the same.

27. Paragraph 27 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 27 of the Complaint and therefore denies the same.

28. Paragraph 28 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant lacks knowledge or information sufficient

to form a belief about the truth of the allegations in ¶ 28 of the Complaint and therefore denies the same.

29. The Defendant denies ¶ 29 of the Complaint.

SECOND CLAIM FOR RELIEF
(Turnover by HCMFA Pursuant to 11 U.S.C. § 542(b))

30. Paragraph 30 of the Complaint is a sentence of incorporation that does not require a response. All prior denials are incorporated herein by reference.

31. Paragraph 31 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 31 of the Complaint and therefore denies the same.

32. Paragraph 32 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 32 of the Complaint and therefore denies the same.

33. The Defendant denies ¶ 33 of the Complaint.

34. Paragraph 34 of the Complaint states a legal conclusion that does not require a response. The Defendant admits that the Plaintiff transmitted the Demand Letter. To the extent ¶ 34 alleges other facts, the Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 34 of the Complaint and therefore denies the same.

35. The Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 35 of the Complaint and therefore denies the same.

36. Paragraph 36 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant lacks knowledge or information sufficient

to form a belief about the truth of the allegations in ¶ 36 of the Complaint and therefore denies the same.

37. The Defendant denies that the Plaintiff is entitled to the relief requested in the prayer, including parts (i), (ii), and (iii).

JURY DEMAND

38. The Defendant demands a trial by jury of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure and Rule 9015 of the Federal Rules of Bankruptcy Procedure.

39. The Defendant does not consent to the Bankruptcy Court conducting a jury trial and therefore demands a jury trial in the District Court.

PRAYER

WHEREFORE, PREMISES CONSIDERED, the Defendant respectfully request that, following a trial on the merits, the Court enter a judgment that the Plaintiff take noting on the Complaint and provide the Defendant such other relief to which it is entitled.

RESPECTFULLY SUBMITTED this 1st day of March, 2021.

MUNSCH HARDT KOPF & HARR, P.C.

By: /s/ Davor Rukavina

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**COUNSEL FOR HIGHLAND CAPITAL
MANAGEMENT FUND ADVISORS,
L.P.**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on the 1st day of March, 2021, a true and correct copy of this document was electronically served by the Court's ECF system on parties entitled to notice thereof, including counsel for the Plaintiff.

/s/ Davor Rukavina

Davor Rukavina, Esq.

EXHIBIT 34

Highland Capital Management, L.P.

(A Delaware Limited Partnership)

Consolidated Financial Statements and Supplemental Information December 31, 2018

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Index
December 31, 2018

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Consolidated Financial Statements	
Consolidated Balance Sheet.....	2
Consolidated Statement of Income	3
Consolidated Statement of Changes in Partners' Capital.....	4
Consolidated Statement of Cash Flows.....	5
Notes to Consolidated Financial Statements	6-39
Supplemental Information.....	40-44



Report of Independent Auditors

To the General Partner of Highland Capital Management, L.P.

We have audited the accompanying consolidated financial statements of Highland Capital Management, L.P. and its subsidiaries (collectively, the "Partnership"), which comprise the consolidated balance sheet as of December 31, 2018, and the related consolidated statements of income, of changes in partners' capital and of cash flows for the year then ended.

Management's Responsibility for the Consolidated Financial Statements

Management is responsible for the preparation and fair presentation of the consolidated financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

Auditors' Responsibility

Our responsibility is to express an opinion on the consolidated financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on our judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, we consider internal control relevant to the Partnership's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Partnership's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Highland Capital Management, L.P. and its subsidiaries as of December 31, 2018, and the results of their operations, changes in their partners' capital and their cash flows for the year then ended, in accordance with accounting principles generally accepted in the United States of America.

Other Matter

Our audit was conducted for the purpose of forming an opinion on the consolidated financial statements taken as a whole. The Supplemental Consolidating Balance Sheet, the Supplemental Consolidating Statement of Income, the Supplemental Unconsolidated Balance Sheet and the Supplemental Unconsolidated Statement of Income are presented for purposes of additional analysis and are not a required part of the consolidated financial statements. The information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the consolidated financial statements. The information has been subjected to the auditing procedures applied in the audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the consolidated financial statements or to the consolidated financial statements themselves and other additional procedures, in accordance with auditing standards generally accepted in the United States of America. In our opinion, the information is fairly stated, in all material respects, in relation to the consolidated financial statements taken as a whole.

A handwritten signature in black ink that reads "PricewaterhouseCoopers LLP".

June 3, 2019

PricewaterhouseCoopers LLP, 2121 N Pearl Street, Suite 2000, Dallas, Texas 75201
T: (214) 999 1400, F: (214) 754 7991, www.pwc.com/us

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Consolidated Balance Sheet
December 31, 2018

(in thousands)

Assets

Cash and cash equivalents	\$	5,034
Investments at fair value (cost \$922,027)		845,186
Management and incentive fees receivable		2,393
Due from broker for securities sold, not yet settled		598
Other assets		9,255
Notes and other amounts due from affiliates		173,398
Intangible assets		3,022
Fixed assets and leasehold improvements, net of accumulated depreciation of \$11,197		4,581

Total assets	\$	1,043,467
---------------------	-----------	------------------

Liabilities and partners' capital

Liabilities

Accounts payable	\$	4,983
Securities sold, not yet purchased (proceeds \$26,135)		32,357
Withdrawals payable		57,009
Due to brokers		116,560
Due to brokers for securities purchased, not yet settled		1,640
Accrued and other liabilities		40,246
Notes payable		55,752
Investment liabilities		46,092

Total liabilities		354,639
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Non-controlling interest		316,867
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Partners' capital		371,961
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Total liabilities and partners' capital	\$	1,043,467
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The accompanying notes are an integral part of these consolidated financial statements.

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Consolidated Statement of Income
Year Ended December 31, 2018

(in thousands)

Revenue:

Management fees	\$	36,600
Interest and investment income		15,831
Incentive fees		70
Shared services fees		9,187
Other income		2,622
Total revenue		<u>64,310</u>

Expenses:

Compensation and benefits		34,475
Professional fees		17,679
Interest expense		5,670
Marketing and advertising expense		2,413
Depreciation and amortization		1,317
Investment and research consulting		1,082
Bad debt expense		7,862
Other operating expenses		10,027
Total expenses		<u>80,525</u>

Other Income/(Expense):

Other income		9,826
Impairment on intangible assets		<u>(2,830)</u>
Total other income		6,996

Loss before investment and derivative activities		<u>(9,219)</u>
--	--	----------------

Realized and unrealized loss on investments and derivatives:

Net realized loss on investments and derivatives		(31,517)
Net change in unrealized loss on investments and derivatives		<u>(93,755)</u>
Net realized and unrealized loss on investments and derivatives		<u>(125,272)</u>

Net loss		(134,491)
----------	--	-----------

Net loss attributable to non-controlling interest		<u>(61,313)</u>
---	--	-----------------

Net loss attributable to Highland Capital Management, L.P.	\$	<u>(73,178)</u>
--	----	-----------------

The accompanying notes are an integral part of these consolidated financial statements.

Highland Capital Management, L.P.
 (A Delaware Limited Partnership)
Consolidated Statement of Changes in Partners' Capital
Year Ended December 31, 2018

(in thousands)

	<u>General Partner</u>	<u>Limited Partners</u>	<u>Total</u>
Partners' capital, December 31, 2017	\$ 163	\$ 450,014	\$ 450,177
Net loss attributable to Highland Capital Management, L.P.	\$ (183)	\$ (72,995)	\$ (73,178)
Partner distributions	<u>\$ (13)</u>	<u>\$ (5,025)</u>	<u>\$ (5,038)</u>
Partners' capital, December 31, 2018	<u>\$ (33)</u>	<u>\$ 371,994</u>	<u>\$ 371,961</u>

The accompanying notes are an integral part of these consolidated financial statements.

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Consolidated Statement of Cash Flows
Year Ended December 31, 2018

(in thousands)

Cash flows from operating activities:

Net loss	\$ (134,491)
Adjustment to reconcile net loss to net cash provided from operating activities:	
Net realized loss on investments and derivative transactions	31,517
Net change in unrealized loss on investments and derivative transactions	93,755
Amortization and depreciation	1,317
Changes in assets and liabilities:	
Management and incentive fee receivable	9,468
Due from brokers	1,689
Due from affiliate	(10,989)
Other assets	4,272
Intangible assets	3,308
Accounts payable	546
Accrued and other liabilities	1,214
Due to brokers for securities purchased, not yet settled	1,886
Due to brokers	11,665
Net cash provided from operating activities	<u>15,157</u>

Cash flows from investing activities:

Purchases of fixed assets and leasehold improvements, net	(67)
Purchases of investments	(195,263)
Proceeds from dispositions of investments	258,858
Proceeds from securities sold, not yet purchased	46,550
Issuance of notes receivable to affiliates	(2,400)
Proceeds from repayments of notes receivable from affiliates	3,395
Purchases of investments to cover securities sold, not yet purchased	(127,954)
Net cash used in investing activities	<u>(16,881)</u>

Cash flows from financing activities:

Payments on notes payable & investment liabilities	(2,743)
Proceeds from long-term debt	38,501
Capital contributions from minority interest investors of consolidated entities	14,615
Capital withdrawals by minority interest investors of consolidated entities	(141,986)
Partner distributions	(5,060)
Net cash used in financing activities	<u>(96,673)</u>

Net decrease in cash and cash equivalents (98,397)

Cash and cash equivalents

Beginning of year	103,479
De-consolidating funds adjustment	(48)
End of year	<u>\$ 5,034</u>

Supplemental disclosure of cash flow information:

Interest paid during the year	\$ (5,629)
Taxes paid during the year	(510,961)
Investments acquired for non-cash consideration	26,018
Investments disposed for non-cash consideration	116

The accompanying notes are an integral part of these consolidated financial statements.

Highland Capital Management, L.P.

Notes to Consolidated Financial Statements

December 31, 2018

1. Description of Business

Highland Capital Management, L.P. (the “Partnership”) was formed on July 7, 1997 as a limited partnership in the state of Delaware. The Partnership is a registered investment adviser under the Investment Advisers Act of 1940 that manages collateralized loan obligations (“CLOs”), hedge funds, private equity funds, and other leveraged loan transactions that are collateralized predominately by senior secured bank debt and high-yield bonds. The Partnership and its subsidiaries make direct investments in debt, equity, and other securities in the normal course of business. The Partnership’s general partner is Strand Advisors, Inc. (the “General Partner”). The Partnership is owned by an unaffiliated (other than through its direct ownership) trust as well as affiliated trusts and personal holdings of the senior management of the Partnership.

As of December 31, 2018, the Partnership provided investment advisory services for eighteen CLOs, five separate accounts, one master limited partnership, and nine hedge funds or private equity structures, with total fee-earning assets under management of approximately \$3.1 billion. The Partnership also provides investment services on behalf of affiliate advisors.

2. Summary of Significant Accounting Policies

The following is a summary of the significant accounting policies followed by the Partnership in preparation of its consolidated financial statements.

Basis of Accounting

The Partnership’s consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles in the United States of America (“U.S. GAAP”) as set forth in the Financial Accounting Standards Board’s Accounting Standards Codification and are stated in the United States Dollar.

Use of Estimates

The preparation of the consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the amounts and disclosures in the consolidated financial statements. Actual results could differ from those estimates and those differences could be material.

Principles of Consolidation

The consolidated financial statements include the accounts of the Partnership and the Partnership’s consolidated subsidiaries (“Consolidated Entities”), which are comprised of (i) those entities in which it has controlling investment and has control over significant operating, financial and investing decisions, (ii) those entities in which it, as the general partner, has control over significant operating, financial and investing decisions, and (iii) variable interest entities (“VIEs”) in which it is the primary beneficiary as described below.

The Partnership determines whether an entity has equity investors who lack the characteristics of a controlling financial interest or does not have sufficient equity at risk to finance its expected activities without additional subordinated financial support from other parties. If an entity has either of these characteristics, it is considered a VIE and must be consolidated by its primary beneficiary, which is the party that, along with its affiliates and de facto agents, absorbs a majority of the VIEs’ expected losses or receives a majority of the expected residual returns as a result of holding variable interests.

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Notes to Consolidated Financial Statements
December 31, 2018

The Partnership assesses consolidation requirements pursuant to ASU 2015-02: Consolidation, which was adopted using the modified retrospective method and resulted in an effective date of adoption of January 1, 2016.

The Partnership and its affiliate's involvement with unconsolidated VIEs is generally limited to that of an advisory services provider, and their investment, if any, represents an insignificant interest in the relevant investment entities' assets under management. The Partnership's affiliate's exposure to risk in these entities is generally limited to any capital contribution it has made or is required to make and any earned but uncollected asset based and performance fees. The Partnership has not issued any investment performance guarantees to these VIEs or their investors, except that the Partnership has agreed to subject the full value of its equity interest in Highland Prometheus Fund to dollar-for-dollar reduction to the extent the third party investor in such fund does not achieve an annual target return.

As of December 31, 2018, the net assets of the unconsolidated VIEs and the Partnership's maximum risk of loss were as follows:

(in thousands)

	Unconsolidated VIE Net Assets	Carrying Value and Maximum Risk of Loss
Sponsored investment funds	\$ 206,329	\$ 12,178

Consolidation of Variable Interest Entities

The Partnership consolidates the following VIEs (along with majority owned funds: Highland Diversified Credit Fund, L.P., and Highland Select Equity Fund, L.P., collectively the "Consolidated Investment Funds"), as the Partnership (or its wholly owned subsidiaries) controls the general partner of the respective entities and is responsible for the daily operations of the following entities:

- Highland Multi Strategy Credit Fund, L.P. ("Multi Strategy Master"), formerly Highland Credit Opportunities CDO, L.P., a Delaware limited partnership that commenced operations on December 15, 2005 and changed its name on August 26, 2014;
- Highland Multi-Strategy Master Fund, L.P. ("Multi-Strategy Master"), a Bermuda limited partnership that commenced operations on July 18, 2006;
- Highland Multi-Strategy Fund, L.P. ("Multi-Strat Domestic Feeder"), a Delaware limited partnership that commenced operations on July 6, 2006;
- Highland Restoration Capital Partners Offshore, L.P. ("Restoration Offshore"), a Cayman limited partnership that commenced operations on September 2, 2008;
- Highland Restoration Capital Partners, L.P. ("Restoration Onshore"), a Delaware limited partnership that commenced operations on September 2, 2008; and

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Notes to Consolidated Financial Statements
December 31, 2018

Consolidation of Majority Owned Entities

The Partnership consolidates the following entities as it has a controlling majority interest:

- 100% interest in Highland Capital Special Allocation, LLC ("HCSA"), a Delaware limited liability company that commenced operations on December 21, 2006;
- 100% interest in Highland Receivables Finance 1, LLC, a Delaware limited liability company that commenced operations on December 29, 2006;
- 100% interest in Highland Multi-Strategy Onshore Master SubFund, LLC, a Delaware limited liability company that commenced operations on July 19, 2006;
- 100% interest in Highland Multi-Strategy Onshore Master Subfund II, LLC, LLC, a Delaware limited liability company that commenced operations on February 22, 2007;
- 100% interest in Highland Brasil, LLC, a Delaware limited liability company that commenced operations on January 28, 2014;
- 100% interest in Highland Capital Management (Singapore) Pte, Ltd. ("HCM Singapore"), a company organized in the Republic of Singapore that commenced operations on April 2, 2008;
- 100% interest in Highland Capital Management Korea, Ltd. ("HCM Korea"), a company organized in the Republic of Korea that commenced operations on August 2, 2012;
- 100% interest in Highland Capital Management Latin America, L.P., ("HCM Latin America"), a Cayman company that was formed on April 13, 2017;
- 100% interest in HE Capital, LLC, a Delaware limited liability company that was formed on March 22, 2007;
- 100% interest in De Kooning, Ltd, a Cayman company that was formed on December 1, 2012;
- 100% interest in Hirst, Ltd., a Cayman company that was formed on December 1, 2012;
- 100% interest in Hockney, Ltd., a Cayman company that was formed on December 1, 2012;
- 100% interest in Oldenburg, Ltd., a Cayman company that was formed on December 1, 2012;
- 100% interest in Eames, Ltd, a Cayman company that was formed on December 12, 2012;
- 99.9% interest in Penant Management, L.P., a Delaware limited partnership that was formed on December 12, 2012;
- 100% interest in Pollack, Ltd., a Cayman company that was formed on December 1, 2012;
- 100% interest in Warhol, Ltd., a Cayman company that was formed on December 1, 2012;

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- 100% interest in HCREF-I Holding Corp., a Delaware company that was formed on December 13, 2012;
- 100% interest in HCREF-XI Holding Corp., a Delaware company that was formed on December 13, 2012;
- 100% interest in HCREF-XII Holding Corp., a Delaware company that was formed on December 13, 2012;
- 100% interest in Highland ERA Management, LLC, a Delaware limited liability company that was formed on February 1, 2013;
- 100% interest in The Dondero Insurance Rabbi Trust, a trust that was formed on May 27, 2004;
- 100% interest in The Okada Insurance Rabbi Trust, a trust that was formed on May 27, 2004;
- 100% interest in Highland Employee Retention Assets ("HERA"), LLC, a Delaware limited liability company that was formed on October 26, 2009;
- 100% interest in Highland Diversified Credit Fund, L.P. ("Highland Offshore Partners"), a Delaware limited partnership which began operations on February 29, 2000 and was organized for the sole purpose of investing substantially all of its assets in Highland Offshore Partners, L.P.;
- 99.6% interest in Highland Select Equity Master Fund, LP, and Highland Select Equity Fund, LP Delaware limited partnerships which began operations on January 1, 2002 and was organized for the purpose of investing and trading in large and small cap stocks that trade for less than intrinsic value;
- 100% interest in Highland Fund Holdings, LLC, a Delaware limited liability company that was formed on May 24, 2016;
- 100% interest in Maple Avenue Holdings, LLC, a Texas limited liability company formed on August 17, 2016;
- 100% interest in Highland HCF Advisor, Ltd., a Cayman company that was formed on October 27, 2017;
- 100% interest in Asury Holdings, LLC, a Delaware limited liability company formed on February 14, 2017 and;
- 100% interest in Highland CLO Management, Ltd., a Cayman company that was formed on October 27, 2017.

All inter-partnership and intercompany accounts and transactions involving the above listed Consolidated Entities have been eliminated in all of the aforementioned consolidating schedules. All the Consolidated Investment Funds are, for U.S. GAAP purposes, investment companies under the American Institute of Certified Public Accountants (AICPA) Audit and Accounting Guide - Investment Companies. The Partnership has retained the specialized accounting of these funds required under U.S. GAAP.

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The following table includes a rollforward of non-controlling interests from December 31, 2017, to December 31, 2018.

(in thousands)

Noncontrolling interest, December 31, 2017	\$ 424,844
Net loss attributable to noncontrolling interest	(61,313)
Noncontrolling partner contributions	14,615
Noncontrolling partner distributions	<u>(58,061)</u>
Noncontrolling interest of deconsolidated entities	<u>(3,218)</u>
Noncontrolling interest, December 31, 2018	<u>\$ 316,867</u>

Investment Transactions

Investment transactions are recorded on a trade date basis. Investments in securities are valued at market or fair value at the date of the consolidated financial statements with the resulting net unrealized appreciation or depreciation reflected in the Consolidated Statement of Income. Realized gains and losses on the transactions are determined based on either the first-in, first-out or specific identification method.

See Note 5 for the Partnership's fair value process and hierarchy disclosures.

Management and Incentive Fee Revenue

The Partnership recognizes revenue as earned in connection with services provided under collateral and investment management agreements. Under these agreements, the Partnership earns management fees calculated as a percentage of assets under management or net asset value. The Partnership also has an opportunity to earn additional incentive fees and incentive allocations related to certain management agreements depending ultimately on the financial performance of the underlying assets the Partnership manages. During the year ended December 31, 2018, the Partnership and its Consolidated Entities recognized management fees and incentive fees of approximately \$36.6 million and \$0.1 million, respectively.

Shared Services Revenue

The Partnership recognizes revenue as earned in connection with services provided to related parties under various shared services agreements. Under these agreements, the Partnership earns fees for services including, but not limited to, back office support functions, marketing, and investment advisory services. During the year ended December 31, 2018, the Partnership and its Consolidated Entities recognized shared services revenue of approximately \$9.2 million, which has been presented in *Shared services fees* in the Consolidated Statement of Income. See further discussion in Note 8.

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Income and Expense Recognition

Interest on currently paying debt instruments is accrued as earned and dividend income and dividends on securities sold, not yet purchased are recorded on the ex-dividend date, net of withholding taxes. In certain instances where the asset has defaulted or some amount of the interest payment is deemed uncollectable, interest is recognized when received. Discounts and premiums associated with purchases of investments are accreted and amortized to interest income, except for deep-discounted debt where ultimate collection of interest and principal may be in doubt. Such accretion/amortization is calculated on an effective-yield basis over the life of the investment. Amendment fees are recognized when agreed to by the underlying company and all settlement contingencies are met. Operating expenses, including interest on securities sold short, not yet purchased, are recorded on the accrual basis as incurred.

Income Taxes

The Partnership is not subject to federal income taxes, and therefore, no provision has been made for such taxes in the accompanying consolidated financial statements. Income taxes are the responsibility of the partners. Certain consolidated subsidiaries are subject to federal income taxes.

Certain entities that are included in these consolidated financial statements are subject to federal and/or state income taxes. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in the period that includes the enactment date. See further discussion in Note 13.

Cash and Cash Equivalents

Cash and cash equivalents consist of cash held at U.S. and foreign banks, deposits with original maturities of less than 90 days, and money market funds. Cash equivalents are carried at cost, which approximates market value. At December 31, 2018, the Partnership and Consolidated Entities held cash balances at certain financial institutions in excess of the federally insured limit of \$0.3 million. The Partnership and Consolidated Entities regularly monitor the credit quality of these institutions.

Notes Receivable

Notes receivable consists of secured promissory notes with maturities greater than one year. When available, the Partnership uses observable market data, including pricing on recent closed transactions to value notes. When appropriate, these notes may be valued using collateral values. Adjustments to the value may be performed in circumstances where attributes specific to the collateral exist suggesting impairment.

Other Intangible Assets

Goodwill and other intangible assets are recorded on the Consolidated Balance Sheet at current carrying values. The Partnership and its Consolidated Entities perform an impairment test on an annual basis. Any impairment in the value of other intangible assets is accounted for in the year when it occurs.

Fixed Assets and Leasehold Improvements

Fixed assets and leasehold improvements are carried at cost, less accumulated depreciation. Depreciation is provided using the straight-line method over the shorter of the estimated useful life of the assets or the lease term.

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The Partnership and its Consolidated Entities are depreciating fixed assets as follows:

	<u>Period</u>
Leasehold improvements	Lease term
Buildings	29 - 40 years
Furniture and fixtures	7 years
Computer and equipment	3 - 5 years
Computer software	3 years

Securities Sold, Not Yet Purchased

Certain of the Partnership's Consolidated Investment Funds engage in "short sales" as part of their investment strategies. Short selling is the practice of selling securities that are borrowed from a third party. The Consolidated Investment Funds are required to return securities equivalent to those borrowed for the short sale at the lender's demand.

Pending the return of such securities, the Consolidated Investment Funds deposit with the lender as collateral the proceeds of the short sale plus additional cash. The amount of the required deposit, which earns interest, is adjusted periodically to reflect any change in the market price of the securities that the Consolidated Investment Funds are required to return to the lender. A gain (which cannot exceed the price at which the Consolidated Investment Funds sold the security short) or a loss (which theoretically could be unlimited in size) will be settled upon termination of a short sale.

Due to/from Brokers

Due to and from broker balances recorded on the Consolidated Balance Sheet include liquid assets maintained with brokers and counterparties for margin account balances and the amounts due for or due from the settlement of purchase and sales transactions. Certain due to and from broker balances have been reported on a net-by-counterparty basis where, in accordance with contractual rights and the Partnership's opinion, there is a right of offset in the event of bankruptcy or default by a counterparty.

Options Contracts

The Partnership and the Consolidated Entities may purchase and write call and put options to gain market exposure or to hedge investments. A call option gives the purchaser of the option the right (but not the obligation) to buy, and obligates the seller to sell (when the option is exercised), the underlying position at the exercise price at any time or at a specified time during the option period. A put option gives the holder the right to sell and obligates the writer to buy the underlying position at the exercise price at any time or at a specified time during the option period. When the Partnership or the Consolidated Entities purchase (write) an option, an amount equal to the premium paid (received) by the entity is reflected as an asset (liability). The amount of the asset (liability) is subsequently marked-to-market to reflect the current market value of the option purchased (written). When a security is purchased (or sold) through an exercise of an option, the related premium paid (or received) is added to (or deducted from) the basis of the security acquired or deducted from (or added to) the proceeds of the security sold. When an option expires (or the Partnership or the Consolidated Entities enter into a closing transaction), the entity realizes a gain or loss on the option to the extent of the premiums received or paid (or gain or loss to the extent the cost of the closing transaction exceeds the premium received or paid). Exercise of a written option could result in the Partnership or the Consolidated Entities purchasing a security at a price different from the current market value.

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The Partnership and the Consolidated Entities are exposed to counterparty risk from the potential that a seller of an option contract does not sell or purchase the underlying asset as agreed under the terms of the option contract. The maximum risk of loss from counterparty risk to the Partnership and the Consolidated Entities is the greater of the fair value of its open option contracts or the premiums paid to purchase the open option contracts. The Partnership and the Consolidated Entities consider the credit risk of the intermediary counterparties to its option transactions in evaluating potential credit risk.

Margin Transactions

To obtain more investable cash, certain of the Consolidated Entities may use various forms of leverage including purchasing securities on margin. A margin transaction consists of purchasing an investment with money loaned by a broker and agreeing to repay the broker at a later date. Interest expense on the outstanding margin balance is based on market rates at the time of the borrowing.

Withdrawals Payable

Withdrawals are recognized as liabilities, net of incentive allocations, when the amount requested in the withdrawal notice becomes fixed and determinable. This generally may occur either at the time of receipt of the notice, or on the last day of a fiscal period, depending on the nature of the request. As a result, withdrawals paid after the end of the year, but based upon year-end capital balances are reflected as withdrawals payable at December 31, 2018. Withdrawal notices received for which the dollar amount is not fixed remains in capital until the amount is determined. At December 31, 2018, the Consolidated Investment Funds had withdrawals payable of \$57.0 million.

Foreign Currency Transactions

The Partnership's subsidiaries HCM Singapore and HCM Korea use Singapore dollars and Korean won, respectively, as their functional currency. All foreign currency asset and liability balances are presented in U.S. dollars in the consolidated financial statements, translated using the exchange rate as of December 31, 2018. Revenues and expenses are recorded in U.S. dollars using an average exchange rate for the relative period. Foreign currency transaction gains and losses resulting from transactions outside of the functional currency of an entity are included in *Other income* on the Consolidated Statement of Income.

The Consolidated Entities do not isolate that portion of the results of operations resulting from changes in foreign exchange rates or investment or fluctuations from changes in market prices of securities held. Such fluctuations are included within the *Net realized and unrealized gains or loss from investments* on the Consolidated Statement of Income.

Life Settlement Contracts

One of the Consolidated Investment Funds, through a subsidiary, holds life settlement contracts and accounts for them using the fair value method. These contracts are recorded as a component of "Investments at fair value" on the Consolidated Balance Sheet. Realized and unrealized gains (losses) on the contracts are recorded in the Consolidated Income Statement. Cash flows relating to the purchase and sale of the contracts are recorded as a component of *Purchase of investments* and *Proceeds from dispositions of investments* on the Consolidated Statement of Cash Flows. At December 31, 2018, the Consolidated Investment Fund was invested in 13 policies, which had a total face value of approximately \$145.3 million and a fair value of \$35.7 million.

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Financing

The Partnership and its Consolidated Entities may finance the acquisition of its investments in securities and loans through financing arrangements which are classified in Notes payable and Investment liabilities on the Consolidated Balance Sheet. The Partnership and its Consolidated Entities recognize interest expense on all borrowings on the accrual basis in the Consolidated Statement of Income.

Financial Instruments

The Partnership and its Consolidated Entities determine fair value of financial instruments as required by U.S. GAAP. The carrying amounts for cash and cash equivalents, receivables, accounts payable, withdrawals payable, debt and notes payable, due to brokers, investment liabilities and accrued liabilities approximate their fair values. For fair value of investment, see Note 5.

Accounts Payable, Accrued and Other Liabilities

Expenses are recorded on an accrual basis, as incurred. Current liabilities are included in Accounts payable. Long-term liabilities are included in Accrued and other liabilities.

Partners' Capital

The Partnership agreement requires that income or loss of the Partnership be allocated to the partners in accordance with their respective partnership interests.

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3. Fixed Assets and Leasehold Improvements

Fixed assets and leasehold improvements are comprised of the following as of December 31, 2018:

(in thousands)

Leasehold improvements	\$	7,193
Buildings		2,595
Furniture and fixtures		2,796
Computer and equipment		2,863
Computer software		331
Accumulated depreciation		(11,197)
	\$	<u>4,581</u>

Depreciation expense in 2018 totaled approximately \$1.3 million for the Partnership and its subsidiaries.

4. Investments

Detailed below is a summary of the Partnership and its Consolidated Entities' investments at December 31, 2018:

(in thousands)

	Amortized Cost/Cost	Fair Value
Common equity securities	\$ 423,306	\$ 535,374
Closed-end mutual funds	100,788	94,845
Floating rate syndicated bank loans	142,586	72,622
Real Estate Investment Trusts	28,271	57,475
Life settlement contracts	65,276	35,744
Limited partnership interests	24,892	30,521
Rights & warrants	26,661	7,446
LLC interests	10,629	2,775
Preferred equity	258	8,282
Asset-backed securities	7,350	102
Participation interests	6,590	-
Corporate bonds	85,421	-
Total investments	<u>\$ 922,027</u>	<u>\$ 845,186</u>
	Proceeds	Fair Value
Securities sold, not yet purchased	<u>\$ (26,135)</u>	<u>\$ (32,357)</u>

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5. Fair Value of Financial Instruments

Fair Value Measurement

U.S. GAAP defines fair value as the price an entity would receive to sell an asset or pay to transfer a liability in an orderly transaction between market participants as of the measurement date. The standard requires fair value measurement techniques to reflect the assumptions market participants would use in pricing an asset or liability and, where possible, to maximize the use of observable inputs and minimize the use of unobservable inputs. It also establishes the following hierarchy that prioritizes the valuation inputs into three broad levels:

- Level 1 – Valuation based on unadjusted quoted prices in active markets for identical assets and liabilities that the Partnership and the Consolidated Entities have the ability to access as of the measurement date. Valuations utilizing Level 1 inputs do not require any degree of judgment.
- Level 2 – Valuations based on (a) quoted prices for similar instruments in active markets; (b) quoted prices for identical or similar instruments in markets that are not active that are reflective of recent market transactions; or (c) models in which all significant inputs are observable, either directly or indirectly.
- Level 3 – Valuations based on indicative quotes that do not reflect recent market transactions and models or other valuation techniques in which the inputs are unobservable and significant to the fair value measurement, which includes situations where there is little, if any, market activity for the asset or liability.

The availability of observable inputs varies among financial instruments and is affected by numerous factors, including the type of instruments, the period of time in which the instrument has been established in the marketplace, market liquidity for an asset class and other characteristics particular to a transaction. When the inputs used in a valuation model are unobservable, management is required to exercise a greater degree of judgment to determine fair value than it would for observable inputs. For certain instruments, the inputs used to measure fair value may fall into different levels of the hierarchy discussed above. In those cases, the instruments are categorized for disclosure purposes based on the lowest level of inputs that are significant to their fair value measurements.

The Partnership and Consolidated Entities use prices and inputs that are current as of the measurement dates. The Partnership also considers the counterparty's non-performance risk when measuring the fair value of its investments.

During periods of market dislocation, the ability to observe prices and inputs for certain instruments may change. These circumstances may result in the instruments being reclassified to different levels within the hierarchy over time. They also create an inherent risk in the estimation of fair value that could cause actual amounts to differ from management's estimates. Whenever possible, the Partnership and its Consolidated Entities use actual market prices or relevant observable inputs to establish the fair value of its assets and liabilities. In cases where observable inputs are not available, the Partnership and Consolidated Entities develop methodologies that provide appropriate fair value estimates. These methodologies are reviewed on a continuous basis to account for changing market conditions.

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The Partnership has established policies, as described above, processes and procedures to ensure that valuation methodologies for investments and financial instruments that are categorized within all levels of the fair value hierarchy are fair and consistent. A Pricing Committee has been established to provide oversight of the valuation policies, processes and procedures, and is comprised of various personnel from the Partnership. The Pricing Committee meets monthly to review the proposed valuations for investments and financial instruments. The Pricing Committee is responsible for establishing the valuation policies and evaluating the overall fairness and consistent application of those policies.

As of December 31, 2018, the Partnership and its Consolidated Entities' investments consisted primarily of common equity securities, closed-end mutual funds, floating rate syndicated bank loans, real estate investment trusts, life settlement contracts, limited partnership interests, rights and warrants, LLC interests, asset-backed securities, and preferred equity. In addition, certain of the Consolidated Entities engage in short sale transactions. The majority of these financial instruments are not listed on national securities exchanges and management is required to use significant judgment to estimate their values.

Public Equity Investments

Publicly traded equities, including closed-end mutual funds and publicly traded REITs are valued at the closing price at the date of the financial statements. The fair value of equity investments that are not traded on national exchanges or through real-time quotation services are derived from methodologies that provide appropriate fair value estimates. Equity investments with quotes that are based on actual trades with a sufficient level of activity on or near the valuation date are classified as Level 2 assets.

Private Equity Investments

The Partnership and Consolidated Entities hold private equity investments which often resulted from the restructuring of other instruments which are classified as common equity securities. These assets are valued using market data obtained from a third-party pricing service and/or quotes from other parties dealing in the specific assets when available. In the event both a reliable market quote and third-party pricing service data are not available for such assets, the Partnership and Consolidated Entities will fair value the assets using various methodologies, as appropriate for individual investments, including comparable transaction multiples, comparable trading multiples, and/or discounted cash flow analysis. When utilizing comparable trading multiples, the Investment Manager determines comparable public companies (peers) based on industry, size, developmental stage, strategy, etc., and then calculates a trading multiple for each comparable company identified by using either a price to book ratio based on publically available information about the underlying comparable company or by dividing the enterprise value of the comparable company by its earnings before interest, taxes, depreciation and amortization (EBITDA) or similar metrics. In certain instances, the inputs used in the calculation of the trading multiples may vary based on the industry or development stage of the company. A multiple determined by the Investment Manager to be within a reasonable range as calculated amongst its peers is then applied to the underlying company's price to book ratio or EBITDA (which may be normalized to adjust for certain nonrecurring events), to calculate the fair value of the underlying company. The fair value may be further adjusted for entity specific facts and circumstances. Private equity investments with quotes that are based on actual trades with a sufficient level of activity on or near the valuation date are classified as Level 2 assets. Private equity investments that are priced using quotes derived from implied values, bid/ask prices for trades that were never consummated, or a limited amount of actual trades are classified as Level 3 assets because the inputs used by the brokers and pricing services to derive the values are not readily observable.

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The Consolidated Entities also invest in warrant securities of publicly-traded companies. The fair value of these investments is based on an option pricing model. The option model bases warrant value on a number of factors including underlying equity price as of the valuation date, strike price, exercise date, time to expiration and volatility. Warrant investments that have observable volatility are classified as Level 2 assets. Warrant investments where volatility inputs are not observable are valued using an estimated volatility input, and are classified as Level 3 assets.

Debt Securities

The Partnership and Consolidated Entities invest in various types of debt, including floating rate syndicated bank loans, which are almost exclusively valued using market data obtained from one or more third-party pricing services or brokers. In instances where a third-party pricing service does not provide pricing for a specific asset, the Partnership and Consolidated Entities first seek to obtain reliable market quotes from other parties dealing in the specific asset. Loans and bonds with quotes that are based on actual trades with a sufficient level of activity on or near the valuation date are classified as Level 2 assets. Loans and bonds that are priced using quotes derived from implied values, bid/ask prices for trades that were never consummated, or a limited amount of actual trades are classified as Level 3 assets because the inputs used by the brokers and pricing services to derive the values are not readily observable.

Absent both a reliable market quote and third-party pricing service data, the Partnership and Consolidated Entities may use various models to establish an estimated exit price. These investments are classified as Level 3 assets. Models used for debt securities are primarily based on identifying comparable assets for which market data is available and pricing the target asset consistent with the yields of the comparable assets. As circumstances require, other industry accepted techniques may be used in modeling debt assets.

Life Settlement Contracts

Life Settlement contracts are valued using mortality tables and interest rate assumptions that are deemed by management to be appropriate for the demographic characteristics of the parties insured under the policies. Management generally utilizes an independent third party firm to perform these calculations and provide the relevant inputs. Management evaluates the results based on visible market activity and market research. Since these inputs are not readily observable, these contracts are classified as Level 3 assets.

At December 31, 2018, the Consolidated Entities' investments in life settlement contracts consisted of the following:

(U.S. dollars in thousands, except number of policies)

Remaining Life Expectancy (in years)	Number of Policies	Face Value	Fair Value
1-2	-	\$ -	\$ -
2-3	3	33,785	16,940
3-4	-	-	-
4-5	-	-	-
Thereafter	10	111,500	18,804
Total	13	\$ 145,285	\$ 35,744

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Asset-Backed Securities

The Consolidated Entities invest in a variety of asset-backed securities. Asset-backed securities are generally valued based on complex cash flow models that analyze the cash flows generated by the investment's underlying assets after adjusting for expected default rates, prepayment rates, collateral quality, market liquidity among other factors. These models are then adjusted based on spreads available in the market place from various research firms, dealers, and trading activity. The Consolidated Entities generally utilize an independent third parties to provide the relevant inputs. The Consolidated Entities evaluate the results based on visible market activity and market research. When appropriate, the Consolidated Entities may apply other techniques based on a specific asset's characteristics. Asset-backed securities with quotes that are based on actual trades with a sufficient level of activity on or near the valuation date are classified as Level 2 assets. Asset-backed securities that are priced using quotes derived from implied values, bid/ask prices for trades that were never consummated, or a limited amount of actual trades are classified as Level 3 assets because the inputs used by the brokers and pricing services to derive the values are not readily observable.

Limited Partnership and LLC Interests

The Partnership and its Consolidated Entities hold limited partnership and LLC interests in various entities. These assets are valued as the net asset value of the limited partnership interests because the entities utilize fair value accounting for their own financial statements. These interests are classified as Level 3 assets.

The Partnership categorizes investments recorded at fair value in accordance with the hierarchy established under U.S. GAAP. The following table provides a summary of the financial instruments recorded at fair value on a recurring basis by level within the hierarchy as of December 31, 2018:

(in thousands)

	Level 1	Level 2	Level 3	Total Fair Value at 12/31/18
Assets				
Common equity securities	\$ 139,236	\$ 296,695	\$ 99,443	\$ 535,374
Closed-end mutual funds	94,845	-	-	94,845
Floating rate syndicated bank loans	-	21	72,601	72,622
Real Estate Investment Trusts	46,594	10,881	-	57,475
Life settlement contracts	-	-	35,744	35,744
Limited partnership interests	-	-	30,521	30,521
Rights & warrants	20	123	7,303	7,446
LLC interests	-	-	2,775	2,775
Preferred equity	8,282	-	-	8,282
Asset-backed securities	-	-	102	102
Total	\$ 288,977	\$ 307,720	\$ 248,489	\$ 845,186
Liabilities				
Common stock & Options sold short	\$ 32,357	\$ -	-	\$ 32,357

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The classification of a financial instrument within Level 3 is based on the significance of the unobservable inputs to the overall fair value measurement. The following table provides a roll forward of the investments classified within Level 3 for the year ended December 31, 2018:

(in thousands)

	Fair Value at December 31, 2017	Purchases	Sales and Maturities	Restructures	Transfers Into Level 3	Net Realized Gains / (Losses)	Net Unrealized Gains / (Losses)	Fair Value at December 31, 2018
Common equity securities	\$ 141,201	\$ 1,058	\$ (116)	\$ -	\$ -	\$ -	\$ (42,700)	\$ 99,443
Floating rate syndicated bank loans	64,307	12,146	(1,952)	-	-	(2,799)	899	72,601
Life settlement contracts	28,959	7,353	-	-	-	-	(568)	35,744
Limited partnership interests	27,863	4,600	(4,766)	-	928	351	1,545	30,521
Rights & warrants	8,013	-	-	-	-	-	(710)	7,303
LLC interests	3,352	165	(1,312)	-	-	985	(415)	2,775
Asset-backed securities	6,477	1	(3,051)	(2,171)	(928)	(39,580)	39,354	102
	<u>\$ 280,172</u>	<u>\$ 25,323</u>	<u>\$ (11,197)</u>	<u>\$ (2,171)</u>	<u>\$ -</u>	<u>\$ (41,043)</u>	<u>\$ (2,595)</u>	<u>\$ 248,489</u>

All net realized and unrealized gains and losses in the tables above are reflected in the accompanying Consolidated Income Statement. Approximately \$41.8 million of the net unrealized losses presented in the table above relate to investments held as of December 31, 2018.

The following page includes a summary of significant unobservable inputs used in the fair valuations of assets and liabilities categorized within Level 3 of the fair value hierarchy.

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Category	Ending Balance at 12/31/2018	Valuation Technique	Unobservable Inputs	Input Value(s)
Common equity securities	\$ 99,443	Multiples Analysis	Multiple of EBITDA	2.5x - 7.0x
			Cap Rate	8.0 - 10.0%
			Multiple of Revenue	0.20x - 0.30x
			Liquidity Discount	25%
		Discounted Cash Flow	Discount Rate	10.5 - 40.0%
			Terminal Multiple	1.25x - 6.50x
			Long-Term Growth Rate	2%
		Transaction Analysis	Multiple of EBITDA	4.0x - 7.75x
			Cap Rate	8 - 10%
		Bid Indications	Enterprise Value (\$mm)	\$720.0 - \$765.0
Floating rate syndicated bank loans	72,601	Multiples Analysis	Multiple of EBITDA	2.0x - 5.0x
			Multiple of Revenue	0.35x - 0.50x
		Escrow Recovery Analysis	Risk Discount	40%
		Appraisal	N/A	N/A
		Bid Indications	Transaction Price	10%
		Sales Proceeds Analysis	Discount Rate	6.0%
		Discounted Cash Flow	Discount Rate	12.3% - 40.0%
			Terminal Multiple	1.25x
			Spread Adjustment	0.0% - 6.3%
Life settlement contracts	35,744	Discounted Cash Flow	Discount Rate	15.0 - 16.0%
Limited partnership interests	30,521	Net Asset Value	Various models including liquidation analysis, and third-party pricing vendor	N/A
Rights & warrants	7,303	Discounted Cash Flow	Discount Rate	11.0% - 17.0%
			Terminal Multiple	6.5x
		Multiples Analysis	Multiple of EBITDA	6.0x - 7.0x
			Multiple of EBITDA	7.25x - 7.75x
			Enterprise Value (in millions)	\$720.0 - \$765.0
LLC interests	2,775	Discounted Cash Flow	Discount Rate	6%
		Adjusted Appraisal	Minority Discount	25%
		Bid Indication	Total Purchase Price (in millions)	\$130.00
Asset-backed securities	102	Adjusted NAV	N/A	N/A
Total	\$ 248,489			

In addition to the unobservable inputs utilized for various valuation methodologies, the Partnership often uses a combination of two or more valuation methodologies to determine fair value for a single holding. In such instances, the Partnership assesses the methodologies and ascribes weightings to each methodology. The selection of weightings is an inherently subjective process, dependent on professional judgement. These selections may have a material impact to the concluded fair value for such holdings.

The significant unobservable inputs used in the fair value measurement of the Partnership's assets could fluctuate significantly, resulting in a significantly higher or lower fair value measurement.

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6. Financial Instruments with Concentration of Credit and Other Risks

Financial Instruments

The Partnership and its Consolidated Entities' investments include, among other things, equity securities, debt securities (both investment and non-investment grade) and bank loans. The Consolidated Entities may also invest in derivative instruments, including total return and credit default swaps. Investments in these derivative instruments throughout the year subject the Consolidated Entities to off-balance sheet market risk, where changes in the market or fair value of the financial instruments underlying the derivative instruments may be in excess of the amounts recognized in the Consolidated Balance Sheet.

Market Risk

Market risk represents the potential loss that may be incurred by the Partnership and its Consolidated Entities due to a change in the market value of its investments or the value of the investments underlying swap agreements. The Partnership and its Consolidated Entities' exposure to market risk is affected by a number of macroeconomic factors, such as interest rates, availability of credit, inflation rates, economic uncertainty and changes in laws and regulations. These factors may affect the level and volatility of securities prices and the liquidity of the Partnership and its Consolidated Entities investments. Volatility or illiquidity could impair the Partnership and its Consolidated Entities performance or result in losses. The Partnership and its Consolidated Entities may maintain substantial trading positions that can be adversely affected by the level of volatility in the financial markets. The performance of life settlement contracts may be adversely impacted by the under estimation of mortality and other rates.

Credit Risk

Credit risk is the potential loss the Partnership and its Consolidated Entities may incur as a result of the failure of a counterparty or an issuer to make payments according to the terms of a contract. Because the Consolidated Entities enter into over-the-counter derivatives such as swaps, it is exposed to the credit risk of their counterparties. To limit the credit risk associated with such transactions, the Consolidated Entities execute transactions with financial institutions that the Investment Manager believes to be financially viable.

Liquidity Risk

The Consolidated Entities' limited partner interests have not been registered under the Securities Act of 1933 or any other applicable securities law. There is no public market for the interests, and neither the Consolidated Entities nor their manager expects such a market to develop.

Business Risk

The Partnership provides advisory services to the Consolidated Entities. Consolidated Entities could be materially affected by the liquidity, credit and other events of the Partnership.

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High Yield Bonds and Loans

The Partnership and its Consolidated Entities' investment portfolios consist of floating rate syndicated bank loans and fixed income securities that are not listed on a national securities exchange. These investments trade in a limited market and it may not be possible to immediately liquidate them if needed. In addition, certain of the Partnership and its Consolidated Entities' investments have resale or transfer restrictions that further reduce their liquidity. Because of the inherent uncertainty of these investments, the Investment Manager's best estimates may differ significantly from values that would have been used had a broader market for the investments existed.

When the Partnership and its Consolidated Entities purchase a senior secured syndicated bank loan, it enters into a contractual relationship directly with the corporate borrower, and as such, is exposed to certain degrees of risk, including interest rate risk, market risk and the potential non-payment of principal and interest, including default or bankruptcy of the corporate borrower or early payment by the corporate borrower. Typically, senior secured syndicated bank loans are secured by the assets of the corporate borrower and the Partnership and its Consolidated Entities have a policy of regularly reviewing the adequacy of each corporate borrower's collateral.

The Partnership and its Consolidated Entities may invest in high-yield bonds that have been assigned lower rating categories or are not rated by the various credit rating agencies. Bonds in the lower rating categories are generally considered to be speculative with respect to the issuer's ability to repay principal and pay interest. They are also subject to greater risks than bonds with higher ratings in the case of deterioration of general economic conditions. Due to these risks, the yields and prices of lower-rated bonds are generally volatile, and the market for them is limited, which may affect the ability to liquidate them if needed.

Debt Obligations

The Partnership and its Consolidated Entities' investment portfolio consists of collateralized loan obligations that are not listed on a national securities exchange. These investments trade in a limited market and it may not be possible to immediately liquidate them if needed. Because of the inherent uncertainty of these investments, the Partnership's best estimates may differ significantly from values that would have been used had broader market for the investments existed.

Distressed Investments

A portion of the high yield corporate bonds and senior secured syndicated bank loans in which the Partnership and its Consolidated Entities invest have been issued by distressed companies in an unstable financial condition that have experienced poor operating performance and may be involved in bankruptcy or other reorganization and liquidation proceedings. These investments have substantial inherent risks. Many of these distressed companies are likely to have significantly leveraged capital structures, which make them highly sensitive to declines in revenue and to increases in expenses and interest rates. The leveraged capital structure also exposes the companies to adverse economic factors, including macroeconomic conditions, which may affect their ability to repay borrowed amounts on schedule.

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Corporate Bonds, Preferred Securities, and Loans

The Consolidated Entities may invest in corporate bonds, floating rate syndicated bank loans, and preferred securities which are rated in the lower rating categories by the various credit rating agencies (or in comparable non-rated securities). Securities in the lower rating categories are subject to greater risk of loss of principal and interest than higher-rated securities and are generally considered to be predominantly speculative with respect to the issuer's capacity to pay interest and repay principal. They are also subject to greater risks than securities with higher ratings in the case of deterioration of general economic conditions. Because of these greater risks associated with the lower-rated securities, the yields and prices of such securities may be more volatile than those for higher-rated securities. The market for lower-rated securities is thinner and less active than that for higher-rated securities, which could adversely affect the prices at which these securities may be sold by the Consolidated Entities.

Limited Diversification

The Investment Manager attempts to diversify the Consolidated Entities' investments. However, the Consolidated Entities' portfolios could become significantly concentrated in any one issuer, industry, sector strategy, country or geographic region, and such concentration of credit risk may increase the losses suffered by the Consolidated Entities. In addition, it is possible that the Investment Manager may select investments that are concentrated in certain classes of financial instruments. This limited diversity could expose the Consolidated Entities to losses that are disproportionate to market movements as a whole.

At December 31, 2018, the Consolidated Entities' investments were predominantly concentrated in the United States and Cayman Islands.

Exit Difficulties

The Partnership and its Consolidated Entities cannot assure investors that it will be able to exit its investments by sale or other disposition at attractive prices, if at all. The mergers and acquisitions and public securities markets are highly cyclical, which means that the Consolidated Entities' investments, even its best performing investments, may be illiquid for extended periods of time despite the Consolidated Entities' efforts to identify attractive exit opportunities. Additionally, a significant portion of the Consolidated Entities' assets at any time will likely consist of debt obligations and other securities that are thinly-traded, for which no market exists and/or are restricted as to their transferability under applicable law and/or documents governing particular transactions of the Consolidated Entities. In some cases, the Consolidated Entities may be unable to realize an investment prior to the date on which the Consolidated Entities are scheduled to terminate and/or have to sell or otherwise dispose of one or more investments on disadvantageous terms as a result of the Consolidated Entities' termination, or distribute such investments in kind.

Custody Risk

The clearing operations for the Partnership and its Consolidated Entities are provided by major financial institutions. In addition, all of the Partnership and its Consolidated Entities' cash and investments are held with banks or brokerage firms, which have worldwide custody facilities and are members of all major securities exchanges. The Partnership or its Consolidated Entities may lose all or a portion of the assets held by these banks or brokerage firms if they become insolvent or fail to perform pursuant to the terms of their obligations. While both the U.S. Bankruptcy Code and the Securities Investor Protection Act of 1970 seek to protect customer property in the event of a broker-dealer's failure, insolvency or liquidation, the Partnership and its Consolidated Entities might be unable to recover the full value of their assets or incur losses due to their assets being unavailable for a period of time.

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Leverage Risk

The Consolidated Entities may borrow funds from brokers, banks and other lenders to finance its trading operations. The use of leverage can, in certain circumstances, magnify the losses to which the Consolidated Entities' investment portfolio may be subject. The use of margin and short-term borrowings creates several risks for the Consolidated Entities. If the value of the Consolidated Entities' securities fall below the margin level required by a counterparty, additional margin deposits would be required. If the Consolidated Entities are unable to satisfy a margin call, the counterparty could liquidate the Consolidated Entities' positions in some or all of the financial instruments that are in the account at the prime broker and cause the Consolidated Entities to incur significant losses. In addition, to the extent the Consolidated Entities have posted excess collateral for margin transactions, there is a risk that the counterparty will fail to fulfill its obligation to return the full value of that collateral.

The failure to satisfy a margin call, or the occurrence of other material defaults under margin or other financing agreements, may trigger cross-defaults under the Consolidated Entities' agreements with other brokers, lenders, clearing firms or other counterparties, multiplying the adverse impact to the Consolidated Entities. In addition, because the use of leverage allows the Consolidated Entities to control positions worth significantly more than its investment in those positions, the amount that the Consolidated Entities may lose in the event of adverse price movements is high in relation to the amount of their investment.

In the event of a sudden drop in the value of the Consolidated Entities' assets, the Consolidated Entities may not be able to liquidate assets quickly enough to satisfy their margin or collateral requirements. As a result, the Consolidated Entities may become subject to claims of financial intermediaries, and such claims could exceed the value of its assets. The banks and dealers that provide financing to the Consolidated Entities have the ability to apply discretionary margin, haircut, and financing and collateral valuation policies. Changes by banks and dealers in any of the foregoing may result in large margin calls, loss of financing and forced liquidations of positions and disadvantageous prices.

Foreign Currency Risk

The Partnership and its Consolidated Entities may invest in securities or maintain cash denominated in currencies other than the U.S. dollar. The Partnership and its Consolidated Entities are exposed to risk that the exchange rate of the U.S. dollar relative to other currencies may change in a manner that has an adverse effect on the reported value of the Partnership and its Consolidated Entities' assets and liabilities denominated in currencies other than the U.S. dollar.

Concentration of Investments

At December 31, 2018, the Consolidated Entities' investments and derivative contracts were predominantly concentrated in the United States and Cayman Islands and across several industries.

Litigation Risk

The Partnership and its Consolidated Entities are periodically subject to legal actions arising from the ordinary course of business. The ultimate outcome of these cases is inherently uncertain and could result in additional losses to the Partnership and/or its Consolidated Entities. Refer to Note 14 for a discussion of open litigation.

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7. Intangible Assets

On May 12, 2017, HCM Latin America, as manager, purchased all rights and obligations for management of a certain hedge fund. As of December 31, 2018, the current carrying value of these rights and obligations is \$3.0 million, which consists of the original purchase price of \$2.0 million and a deferred purchase price of \$1.0 million and is reflected in the Consolidated Balance Sheet.

The Partnership and its Consolidated Entities perform an impairment test as required by U.S. GAAP on a yearly basis. The Partnership has determined that an impairment charge was necessary for the value obtained on December 19, 2017, for subadvisory and shared servicing rights from an affiliate. As of December 31, 2018, the asset was determined to be fully impaired and an impairment expense of \$2.8 million is reflected in the Consolidated Statement of Income.

8. Related Party Transactions

Investments Under Common Control

Certain members of the Partnership's management serve as members on the Boards of Directors for some of the companies with which it invests. Because these individuals participate in the management of these companies, investments held by the Partnership and its subsidiaries in these companies may, from time to time, not be freely tradable. As of December 31, 2018, the Partnership and its Consolidated Entities held the following investments in these companies:

(in thousands)

<u>Issuer</u>	<u>Type of Investment</u>	<u>Fair Value</u>
Metro-Goldwyn-Mayer, Inc.	Common Stock	296,695
Comerstone Healthcare Group Holding, Inc.	Common Equity	59,539
OmniMax International, Inc.	Term Loan	52,464
JHT Holdings Inc.	Common Stock	25,099
OmniMax International, Inc.	Common Equity	7,804
Carey International, Inc.	Term Loan	5,401
CCS Medical, Inc.	Loan	5,960
Trussway Holdings, LLC	Common Equity	4,582
JHT Holdings Inc.	Term Loan	4,160
OmniMax International, Inc.	Warrants	551

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Certain investments are issued and managed by affiliates of the Partnership. These investments are subject to the same valuation policies and procedures as similar investments within the same level of the fair value hierarchy. As of December 31, 2018, the Partnership and the Consolidated Entities held the following investments that were issued and managed by affiliates of the Partnership:

(in thousands)

Issuer	Type of Investment	Fair Value
Harko, LLC	LLC Units	\$ 2,721
Highland CLO Funding	Partnership Interest	610
Highland Energy MLP Fund	Mutual Fund Shares	1,363
Highland Floating Rate Opportunities Fund	Closed-end mutual fund shares	832
Highland Global Allocation Fund	Mutual Fund Shares	2,173
Highland Long/Short Equity Fund	Mutual Fund Shares	267
Highland Long/Short Healthcare Fund	Mutual Fund Shares	2,963
Highland Master Loan Fund	Limited Partnership interest	106
Highland Merger Arbitrage Fund	Mutual Fund Shares	1,321
Highland Opportunistic Credit Fund	Mutual Fund Shares	5,477
Highland Premier Growth Equity Fund	Mutual Fund Shares	64
Highland Small Cap Equity Fund	Mutual Fund Shares	465
NexPoint Strategic Opportunities Fund	Mutual Fund Shares	36,563
NexPoint Multi Family Capital Trust	REIT	10,881
NexPoint Real Estate Strategies Fund	Closed-end mutual fund shares	1,454
NexPoint Residential Trust	REIT	85,223

Expenses Reimbursable by Funds Managed

In the normal course of business, the Partnership typically pays invoices it receives from vendors for various services provided to the investment funds the Partnership manages. A summary of these eligible reimbursable expenses are then submitted to the trustee/administrator for each respective fund, typically on a quarterly basis, and the Partnership receives payment as reimbursement for paying the invoices on behalf of the respective funds. As of December 31, 2018, approximately \$6.4 million in reimbursable expenses were due from various affiliated funds and entities for these eligible expenses, and is included in *Other Assets* in the accompanying Consolidated Balance Sheet.

Accounts Held with Related Party

During the year the Partnership and its Consolidated Entities maintained bank accounts at NexBank, SSB ("NexBank"), a related party by way of common control. As of December 31, 2018, balances in these accounts were approximately \$0.5 million, a portion of which exceeds Federal deposit insurance limits.

Investment in Affiliated Loans

During the year, certain subsidiaries of the Partnership were invested in several bank loans in which NexBank was the agent bank. Interest earned on the loans during the year was approximately \$10.4 million and is included in interest and investment income in the Consolidated Statement of Income. At December 31, 2018, these subsidiaries were invested in NexBank agented loans with commitments and market values totaling approximately \$83.3 million and \$56.5 million, respectively.

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Notes and Other Amounts Due from Affiliates

During the year ended December 31, 2018, Highland Capital Management Fund Advisors, L.P. ("HCMFA") did not issue any new promissory notes to the Partnership. The outstanding promissory notes accrue interest at a rate ranging from 1.97 - 2.62%, the mid-term applicable federal rate as promulgated by the Internal Revenue Service. As of December 31, 2018 total interest and principal due on outstanding promissory notes was approximately \$5.3 million and is payable on demand. The Partnership will not demand payment on amounts owed that exceed HCMFA's excess cash availability prior to May 31, 2021. The fair value of the Partnership's outstanding notes receivable approximates the carrying value of the notes receivable.

During the year ended December 31, 2018, NexPoint Advisors, L.P. ("NPA") did not issue any new promissory notes to the Partnership. The outstanding promissory note accrues interest at a rate of 6.0%. As of December 31, 2018 total interest and principal due on the outstanding promissory note was approximately \$28.6 million and is payable in annual installments throughout the term of the loan. The fair value of the Partnership's outstanding notes receivable approximates the carrying value of the notes receivable.

During the year ended December 31, 2018, HCRE Partners, LLC ("HCRE") issued a promissory note to the Partnership in the amount of \$0.8 million. The note accrues interest at a rate of 8.0%. As of December 31, 2018 total interest and principal due on outstanding promissory notes was approximately \$9.4 million and is generally payable in annual installments throughout the term of the note. The fair value of the Partnership's outstanding notes receivable approximates the carrying value of the notes receivable.

During the year ended December 31, 2018, Highland Capital Management Services, Inc. ("HCMSI") issued promissory notes to the Partnership in the aggregate amount of \$0.4 million. All outstanding promissory notes accrue interest at a rate ranging from 2.75% – 3.05%, the long-term applicable federal rate as promulgated by the Internal Revenue Service. As of December 31, 2018 total interest and principal due on outstanding promissory notes was approximately \$14.0 million and is generally payable in annual installments throughout the term of the notes. The fair value of the Partnership's outstanding notes receivable approximates the carrying value of the notes receivable.

During the year ended December 31, 2018, James Dondero ("Dondero") issued promissory notes to the Partnership in the aggregate amount of \$14.9 million. The outstanding promissory notes accrue interest at a rate ranging from 2.03% – 2.95%, the average long-term applicable federal rate as promulgated by the Internal Revenue Service. As of December 31, 2018 total interest and principal due on outstanding promissory notes was approximately \$29.2 million and is generally payable in annual installments throughout the term of the note. The fair value of the Partnership's outstanding notes receivable approximates the carrying value of the notes receivable.

During the year ended December 31, 2018, Mark Okada ("Okada") did not issue any new promissory notes to the Partnership. All outstanding promissory notes accrue interest at a rate of 2.25%, the average long-term applicable federal rate as promulgated by the Internal Revenue Service. As of December 31, 2018 total interest and principal due on outstanding promissory notes was approximately \$1.3 million and is payable on demand. The fair value of the Partnership's outstanding notes receivable approximates the carrying value of the notes receivable.

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During the year ended December 31, 2018, The Dugaboy Investment Trust (“Dugaboy”) did not issue any new promissory notes to the Partnership. All outstanding promissory notes accrue interest at a rate of 3.26%, the average long-term applicable federal rate as promulgated by the Internal Revenue Service. As of December 31, 2018 total interest and principal due on outstanding promissory notes was approximately \$20.1 million and is payable in annual installments throughout the term of the note. The fair value of the Partnership’s outstanding notes receivable approximates the carrying value of the notes receivable.

On December 21, 2015, the Partnership entered into a contribution agreement (the “Contribution Agreement”) with an affiliated trust. Pursuant to the Contribution Agreement, a note (the “Note Receivable”) in the amount of \$63.0 million was due to the Partnership. The Note Receivable will mature on December 21, 2030. The Note Receivable accrues interest at a rate of 2.61% per annum. Accrued interest is paid-in-kind, with principal receipts occurring pursuant to a note amortization schedule, with such annual receipts commencing December 21, 2019. During the year, the trust pre-paid \$2.1 million. As of December 31, 2018 total interest and principal due on the Note Receivable was approximately \$60.2 million.

Services Performed by or on Behalf of an Affiliate

In March 2007, Highland Capital of New York, Inc. a New York corporation (“Highland New York”), was formed and has performed marketing services for the Partnership and its affiliates in connection with the Partnership’s investment management and advising business, including, but not limited to, assisting Highland Capital in the marketing and sales of interests in investment pools for which Highland Capital serves as the investment manager. The Partnership is charged a marketing services fee for the services that Highland New York performs on the Partnership’s behalf. Separately, the Partnership pays for, and seeks reimbursement for, various operating expenses on behalf of Highland New York. For the year ended December 31, 2018, total marketing fee expense charged to the Partnership by Highland New York was approximately \$0.9 million. Because the Partnership funded Highland New York’s operations, including amounts above the marketing fee, as of December 31, 2018, net amounts owed to the Partnership by Highland New York was approximately \$4.9 million.

Effective December 15, 2011, the Partnership commenced performing services on behalf of HCMFA, a Delaware limited partnership and registered investment advisor. Services include, but are not limited to compliance, accounting, human resources, IT and other back office support functions. The Partnership charges a fee for the services performed. For the year ended December 31, 2018, the total fee charged by the Partnership to HCMFA was approximately \$2.7 million and as of December 31, 2018, amount owed to the Partnership by HCMFA was approximately \$0.2 million.

Effective July 29, 2010, the Partnership commenced performing services on behalf of Falcon E&P Opportunities GP, LLC. (“Falcon”), a Delaware limited liability company and registered investment advisor. Services include, but are not limited to compliance, accounting, human resources, IT and other back office support functions. The Partnership charges a fee for the services performed. For the year ended December 31, 2018, the total fee charged by the Partnership to Falcon was approximately \$0.2 million and as of December 31, 2018, no amounts were owed to the Partnership by Falcon for services rendered.

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Effective March 17, 2017, pursuant to the Third Amended and Restated Sub-Advisory Agreement and the Fourth Amended and Restated Shared Services Agreement, the Partnership continued performing services on behalf of Acis Capital Management, L.P. ("Acis"), a Delaware limited partnership and registered investment advisor. Subadvisory services include investment advisory services and shared services include, but are not limited to compliance, accounting, human resources, IT and other back office support functions. The Partnership charges a fee for the services performed. For the year ended December 31, 2018, the total fees charged by the Partnership to Acis for shared services and subadvisory fees were approximately \$2.6 million and \$3.4 million, respectively. As of December 31, 2018, amount owed to the Partnership by Acis was approximately \$6.0 million. Although such fees were earned in 2018, all related revenues and receivables recorded by the Partnership have been fully reserved against based on estimated collectability.

Effective January 1, 2018, pursuant to the Third Amended and Restated Shared Services Agreement, the Partnership commenced performing services on behalf of NPA. Services include, but are not limited to compliance, accounting, human resources, IT and other back office support functions. The Partnership charges a fee for the services performed. For the year ended December 31, 2018, the total fee charged by the Partnership to NexPoint was approximately \$2.0 million and as of December 31, 2018, no amounts were owed to the Partnership by NexPoint for services rendered.

Effective September 1, 2017, pursuant to the Third Amended and Restated Shared Services Agreement dated September 26, 2017, the Partnership commenced performing services on behalf of NexBank Capital, Inc. ("NexBank Capital"), financial services company. Services include, but are not limited to compliance, accounting, human resources, IT and other back office support functions. The Partnership charges a fee for the services performed. For the year ended December 31, 2018, the total fee charged by the Partnership to NexBank Capital was approximately \$0.2 million and as of December 31, 2018, \$0.1 million was owed to the Partnership by NexBank Capital for services rendered.

Effective September 1, 2017, pursuant to the Third Amended and Restated Investment Advisory Agreement dated September 26, 2017, the Partnership commenced performing services on behalf of NexBank SSB, ("NexBank"), a Texas savings bank. Services include investment advisory services. The Partnership charges a fee for the services performed. For the year ended December 31, 2018, the total fee charged by the Partnership to NexBank was approximately \$3.6 million and as of December 31, 2018, amounts owed by NexBank to the Partnership for services rendered were approximately \$0.9 million.

Effective April 1, 2015, the Partnership commenced performing services on behalf of NexPoint Real Estate Advisors, L.P. ("NREA"). Services include, but are not limited to compliance, accounting, human resources, IT and other back office support functions. NREA is charged a fee for the services provided. For the year ended December 31, 2018, the total fee charged to NREA by the Partnership was approximately \$1.0 million and as of December 31, 2018, no amounts were owed by NREA to the Partnership for services rendered.

Effective January 1, 2018, the Partnership entered in to a Payroll Reimbursement Agreement (the "Agreement") with HCMFA. Under the Agreement, HCMFA reimburses the Partnership for the cost of any dual employees of the Partnership and HCMFA and who provide advice to registered investment companies advised by HCMFA. For the year ended December 31, 2018, the total fees charged by the Partnership to HCMFA was approximately \$6.2 million and as of December 31, 2018, no amounts were owed by HCMFA to the Partnership for services rendered.

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Effective January 1, 2018, the Partnership entered in to a Payroll Reimbursement Agreement (the "Agreement") with NPA. Under the Agreement, NPA reimburses the Partnership for the cost of any dual employees of the Partnership and NPA and who provide advice to registered investment companies advised by NPA. For the year ended December 31, 2018, the total fees charged by the Partnership to NPA was approximately \$4.3 million and as of December 31, 2018, no amounts were owed by NPA to the Partnership for services rendered.

Investment liability

On December 28, 2016, the Partnership entered into a purchase and sale agreement with The Get Good Nonexempt Trust ("Get Good"). In consideration for a note receivable from an affiliate, the Partnership sold or participated certain investments that it already held, with the participated investments carrying an aggregate market value of \$21.3 million as of the date of the transaction. The fair value of the Agreement will fluctuate with the fair value of the securities, throughout the term of the Agreement. As of December 31, 2018, the fair value of the participated investments was \$12.1 million.

On December 5, 2016, Select entered in to Stock Purchase Agreements with two counterparties for shares of Trussway Industries ("Trussway"), in exchange for promissory notes in the aggregate amount of \$15.4 million. The promissory notes accrue interest at a rate of 2.07%, the long-term Applicable Federal Rate, compounded annually. Select must pay one-twenty-fifth of the initial note amounts, plus any additional principal attributable to the sale of Trussway, along with accumulated interest on an annual basis. The promissory notes will mature on December 5, 2041. As of December 31, 2018 the remaining principal payable on the promissory notes was \$14.8 million. The fair value of Select's outstanding notes payable approximates the carrying value of the notes payable.

During 2014 and 2015, Select received multiple master securities loan agreements (the "Securities Agreements") for securities borrowed from an affiliate. The Securities Agreements accrue interest at a rate ranging from 0.38 - 0.48%, the short term Applicable Federal Rate. The fair value of the securities loans will fluctuate with the fair value of the borrowed securities, throughout the term of the Securities Agreements. As of December 31, 2018, the fair value of the loans was \$19.2 million. The fair value of Select's securities loans approximates the carrying value of the securities loans.

9. Notes Payable

Promissory Notes and Loan Agreements

On August 17, 2015, the Partnership entered in to a promissory note with Frontier State Bank ("Frontier") in the amount of \$9.5 million. Pursuant to the First Amended and Restated Loan Agreement, dated March 29, 2018, Frontier made an additional loan to the Partnership in the amount of \$1.0 million. The promissory note accrues interest at the 3 month LIBOR rate plus 4.75%, adjusted each date of change, per annum. Accrued interest shall be paid quarterly. The promissory note is collateralized by shares of voting common stock of MGM Holdings, Inc and will mature on August 17, 2021. As of December 31, 2018 the remaining principal payable on the promissory note was \$7.2 million. The fair value of the Partnership's outstanding notes payable approximates the carrying value of the notes payable.

On August 25, 2015, Highland Select Equity Fund, L.P. ("Select") entered in to a promissory note with Dugaboy in the amount of \$1.0 million. The promissory note accrues interest at a rate of 2.82%, the long-term Applicable Federal Rate, compounded annually. The accrued interest and principal of the promissory note is due and payable on demand. As of December 31, 2018 the remaining principal payable on the promissory note was \$1.0 million. The fair value of Select's outstanding notes payable approximates the carrying value of the notes payable.

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On October 7, 2016, the Partnership entered in to a promissory note with Acis in the amount of \$12.7 million. The Partnership is required to make certain payments of the initial note amount, plus accumulated interest on May 31 of each year, until maturity. The promissory note is set to mature on May 31, 2020. The promissory note accrues interest at a rate of 3.00% per annum. Pursuant to an Assignment and Transfer Agreement dated November 3, 2017, between Acis and an affiliate of the Partnership, Acis transferred the promissory note to the affiliate. As of December 31, 2018 the remaining principal payable on the promissory note was \$9.5 million.

On August 29, 2016, Maple Avenue Holdings, LLC ("Maple") entered in to a promissory note with Great Southern Bank in the amount of \$3.9 million. Maple must pay principal and accrued interest installments on a monthly basis until maturity. The promissory note will mature on August 29, 2019. The promissory note accrues interest at a rate of 3.26% per annum. As of December 31, 2018 the remaining principal payable on the promissory note was \$3.4 million. The fair value of Maple's outstanding notes payable approximates the carrying value of the notes payable.

On May 1, 2018, Multi Strategy Master executed a loan agreement (the "Loan Agreement") with NexBank SSB, an affiliate of the Partnership. The original principal borrowed under the Loan Agreement was \$36.5 million. The loan bears interest at the 1-month LIBOR rate plus 3.25%. The maturity date is May 1, 2021. For the year ended December 31, 2018, the Multi Strategy Master incurred and paid approximately \$1.3 million of interest expense, and made aggregate principal payments of approximately \$1.9 million. Shares of Metro-Goldwyn Mayer, Inc. are pledged as collateral on the loan. The loan was used to purchase an outstanding redemption of \$38.7 million at a discount resulting in a reallocation of partners' capital on the Statement of Changes in Partners' Capital. As of December 31, 2018 the remaining principal payable on the loan was \$34.6 million. The fair value of Multi Strategy Master's outstanding loan approximates the carrying value of the loan.

10. Due to Broker

As of December 31, 2018 the due to broker balance of approximately \$116.6 million is payable to financing counterparties for margin transactions.

11. Commitments and Contingencies

Contracts in the Normal Course of Business

In the normal course of business the Partnership and its subsidiaries may enter into contracts which provide general indemnifications and contain a variety of presentations and warranties that may expose the Partnership and its subsidiaries to some risk of loss. The Partnership regularly co-invests in vehicles it advises. The amounts committed are within the Partnerships capacity to fund when capital is called. In addition to the other financial commitments discussed in the consolidated financial statements, the amount of future losses arising from such undertakings, while not quantifiable, is not expected to be significant. Also refer to Note 8 for commitments of certain subsidiaries in affiliated loans.

Loans as Co-Borrower

The Partnership is a named co-borrower in a Bridge Loan Agreement ("Loan") dated September 26, 2018 with Key Bank for \$556.3 million. The Loan accrues interest at the 3 month LIBOR rate plus 3.75%, per annum. Accrued interest shall be paid monthly by a borrower other than the Partnership ("Lead Borrower"). The Loan will mature on September 26, 2019. The carrying value of the Loan is reflected on the financial statements of the Lead Borrower.

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Notes to Consolidated Financial Statements
December 31, 2018

Legal Proceedings

The Partnership is a party to various legal proceedings arising in the ordinary course of business. While any proceeding or litigation has an element of uncertainty, management believes that the final outcome will not have a materially adverse effect on the Partnership's Consolidated Balance Sheet, Consolidated statement of Income, or its liquidity. See Note 14.

Operating Leases

The Partnership has an operating lease and associated commitments related to its main office space. Future minimum lease payments under operating lease commitments with initial or non-cancelable terms in excess of one year, at inception, are as follows:

(in thousands)

Years Ending December 31,

2019	1,550
2020	1,566
2021	1,567
2022	522
Total	<u>\$ 5,205</u>

Total rental expense of the Partnership and its Consolidated Entities for operating leases was approximately \$1.5 million for the year ended December 31, 2018.

12. Post Retirement Benefits

In December 2006, the Partnership created a defined benefit plan to which all employees and certain affiliated persons could participate if they met the eligibility requirements. The Partnership uses a December 31 measurement date for its defined benefit plan.

Effective December 31, 2008, the Partnership amended the plan by freezing it to new participants and additional benefit accruals. A new amendment became effective on January 1, 2011 in which a named participant was admitted to the plan and is eligible to earn benefit accrual. 2018 expense reflects a service cost charge for the value of the new participant's benefit earned during 2018.

The Partnership's benefit plan obligation and plan assets for the year ended December 31, 2018 are reconciled in the tables below.

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Notes to Consolidated Financial Statements
December 31, 2018

(in thousands)

Change in projected benefit obligation	2018
Benefit obligation at beginning of year	\$ 2,578
Service cost	6
Interest cost	80
Plan participants' contributions	-
Amendments	-
Actuarial loss/(gain)	386
Acquisition/(divestiture)	-
Benefits paid	(121)
Benefit obligation at end of year	<u>\$ 2,929</u>
Change in plan assets	2018
Fair value of plan assets at beginning of year	\$ 2,924
Actual return on plan assets	449
Acquisition/(divestiture)	-
Employer contribution	-
Plan participants' contributions	-
Benefits paid	(121)
Other increase/(decrease)	-
Fair value of plan assets at year end	<u>\$ 3,252</u>
Reconciliation of Funded Status	2018
Accumulated benefit obligation at end of year	\$ 2,929
Projected benefit obligation at end of year	2,929
Fair value of assets at end of year	<u>3,252</u>
Funded status at end of year	<u>\$ 323</u>

The Partnership did not contribute to the plan during 2018.

Assumptions

Weighted-average assumptions used to determine benefit obligations at December 31, 2018:

Discount rate	3.19%
Rate of compensation increase	N/A

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Notes to Consolidated Financial Statements
December 31, 2018

Weighted-average assumptions used to determine net periodic benefit cost at December 31, 2018:

Discount rate	3.19%
Expected long-term return on plan assets	3.19%
Rate of compensation increase	N/A

As of December 31, 2018, there were no plan assets categorized as Level 3.

13. Income Taxes

The Partnership

For U.S. income tax purposes, the Partnership is treated as a pass-through-entity, which means it is not subject to income taxes under current Internal Revenue Service or state and local guidelines. Each partner is individually liable for income taxes, if any, on their share of the Partnership's net taxable income.

The Partnership files tax returns as prescribed by the tax laws of the jurisdictions in which it operates. In the normal course of business, the Partnership is subject to examination by federal and foreign jurisdictions, where applicable. As of December 31, 2018, the tax years that remain subject to examination by the major tax jurisdictions under the statute of limitations is from the year 2015 forward (with limited exceptions).

Authoritative guidance on accounting for and disclosure of uncertainty in tax positions requires the General Partner to determine whether a tax position of the Partnership is more likely than not to be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. For tax positions meeting the more likely than not threshold, the tax amount recognized in the financial statements is the largest benefit that as a greater than fifty percent likelihood of being realized upon ultimate settlement with the relative taxing authority. The General Partner does not expect a significant change in uncertain tax positions during the twelve months subsequent to December 31, 2018.

Multi Strategy Master

For U.S. income tax purposes, Multi Strategy Master is treated as a pass-through entity, which means it is not subject to federal income taxes under current Internal Revenue Service guidelines. However, each investor may be individually liable for income taxes, if any, on its share of the partnership's net taxable income.

Multi Strategy Master trades in senior secured syndicated bank loans for its own account and, as such, non-U.S. Investment Vehicle investors are generally not subject to U.S. tax on such earnings (other than certain withholding taxes indicated below). The Partnership intends to conduct Multi Strategy Master business in such a manner that it does not constitute a U.S. trade or business, nor does it create a taxable presence in any of the jurisdictions in which the Partnership has offices.

Dividends as well as certain interest and other income received by Multi Strategy Master from sources within the United States may be subject to, and reflected net of, United States withholding tax at a rate of 30% for non-U.S. Investment Vehicles. Interest, dividend and other income realized by Multi Strategy Master from non-U.S. sources and capital gains realized on the sale of securities of non-U.S. issuers may be subject to withholding and other taxes levied by the jurisdiction in which the income is sourced. As of December 31, 2018, a minimal withholding tax liability of \$0.9 million is classified within accrued and other liabilities on the Consolidated Balance Sheet.

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Notes to Consolidated Financial Statements
December 31, 2018

Multi Strategy Master applies authoritative guidance which requires management to determine whether a tax position Multi Strategy Master is more likely than not to be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. For tax positions meeting the more likely than not threshold, the tax amount recognized in the consolidated financial statements is the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate settlement with the relative taxing authority. Management does not expect a significant change in uncertain tax positions during the twelve months subsequent to December 31, 2018.

Multi Strategy Master files tax returns as prescribed by the tax laws of the jurisdictions in which it operates. In the normal course of business, Multi Strategy Master is subject to examination by federal and foreign jurisdictions, where applicable. As of December 31, 2018, the tax years that remain subject to examination by the major tax jurisdictions under the statute of limitations is from the year 2015 forward (with limited exceptions).

Restoration Onshore

Restoration Onshore is treated as a pass-through entity for tax purposes, which means it is not subject to U.S. income taxes under current Internal Revenue Service or state and local guidelines. Each Partner is individually liable for income taxes, if any, on its share of the Restoration Onshore's net taxable income. Interest, dividends and other income realized by Restoration Onshore from non-U.S. sources and capital gains realized on the sale of securities of non-U.S. issuers may be subject to withholding and other taxes levied by the jurisdiction in which the income is sourced.

Restoration Onshore applies the authoritative guidance on accounting for and disclosure of uncertainty in tax positions, which requires the General Partner to determine whether a tax position of Restoration Onshore is more likely than not to be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. For tax positions meeting the more likely than not threshold, the tax amount recognized in the financial statements is the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate settlement with the relevant taxing authority.

The General Partner has determined that there was no effect on the financial statements from the Partnership's application of this authoritative guidance. The General Partner does not expect a significant change in uncertain tax positions during the twelve months subsequent to December 31, 2018. Restoration Onshore files tax returns as prescribed by the tax laws of the jurisdictions in which it operates. In the normal course of business, the Partnership is subject to examination by federal, state, local and foreign jurisdictions, where applicable. As of December 31, 2018, the tax years that remain subject to examination by the major tax jurisdictions under the statute of limitations is from the year 2015 forward (with limited exceptions).

Restoration Offshore

Restoration Offshore is a Cayman Islands exempted company. Under the current laws of the Cayman Islands, there is no income, estate, transfer, sales or other tax payable by Restoration Offshore. Restoration Offshore has elected to be treated as a corporation for U.S. tax purposes and files a protective 1120-F.

The General Partner intends to conduct the business of Restoration Offshore in such a way that Restoration Offshore's activities do not constitute a U.S. trade or business and any income or realized gains earned by Restoration Offshore do not become "effectively connected" with a trade or business carried on in the United States for U.S. federal income tax purposes.

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Notes to Consolidated Financial Statements
December 31, 2018

Dividends as well as certain interest and other income received by the master partnership of Restoration Offshore from sources within the United States may be subject to, and reflected net of, United States withholding tax at a rate of 30% for non-U.S. Investment Vehicles. Interest, dividend and other income realized by the master partnership of Restoration Offshore from non-U.S. sources and capital gains realized on the sale of securities of non-U.S. issuers may be subject to withholding and other taxes levied by the jurisdiction in which the income is sourced.

Restoration Offshore applies the authoritative guidance on accounting for and disclosure of uncertainty in tax positions, which requires the General Partner to determine whether a tax position of Restoration Offshore is more likely than not to be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. For tax positions meeting the more likely than not threshold, the tax amount recognized in the financial statements is the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate settlement with the relevant taxing authority. The General Partner has determined that there was no effect on the financial statements from the Partnership's application of this authoritative guidance. The General Partner does not expect a significant change in uncertain tax positions during the twelve months subsequent to December 31, 2018. As of December 31, 2018, the tax years that remain subject to examination by major tax jurisdictions under the statute of limitations is from the year 2015 forward (with limited exceptions).

The remaining entities consolidated by the Partnership had no uncertain tax positions which required accrual under U.S. GAAP.

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Notes to Consolidated Financial Statements
December 31, 2018

14. Legal Proceedings

The Partnership and certain affiliated investment vehicles are defendants in a complaint filed on February 24, 2009 New York state court by UBS Securities LLC and UBS AG, London Branch relating to a CLO warehouse facility with respect to which UBS is attempting to extend liability beyond the two entities that bore sole risk of loss under the governing documents. On February 19, 2010, the court dismissed all claims against the Partnership. UBS since has filed additional claims against the Partnership and certain additional investment vehicles. On July 21, 2011, the First Appellate Division again dismissed two of UBS's four claims against the Partnership, severely limiting the remaining two claims. Additional claims were dismissed in a further appellate ruling issued on October 31, 2017. Certain claims were tried in July 2018 against two Highland-affiliated defendants, but the trial court has neither ruled on those claims nor indicated when it will set UBS's remaining claims for trial. The second trial, if it occurs, will try all claims against the Partnership and certain affiliated investment vehicles.

From time to time the Partnership is party to disputes with disgruntled former employees. One such matter involves a former employee that improperly recorded internal conversations in violation of the Partnership's internal policies and procedures and potentially certain criminal and regulatory provisions. The former employee obtained a \$7.9 million judgment against Highland affiliate Acis Capital Management, L.P. ("Acis"). The employee currently is attempting to collect this judgment through various proceedings in Texas state and federal court, including claims against Highland for receipt of assets from Acis.

In another matter, a Court ruled that a former employee breached his fiduciary duty to the Partnership, owed damages to the Partnership, and ordered the former employee to cease using or disclosing the Partnership's confidential information. Additionally, an award was entered in favor of the employee against a separate incentive compensation entity for an interest that was already escrowed in his name prior to trial and in which he was already vested. The dispute over the amount of his vested interest is on-going. Additionally, the Partnership from time to time must take action to enforce the permanent injunction against the former employee's continuing improper disclosures of the Partnership's confidential information.

The Partnership is engaged in litigation and arbitration with a group of investors relating to the post-financial crisis wind down and distribution of the remaining assets in the Crusader hedge fund vehicle.

The Partnership currently is and has been previously subject to various legal proceedings, many of which have been due to the nature of operating in the distressed loan business in the U.S. The legal process is often the route of last resort to recover amounts due from delinquent borrowers. We currently do not anticipate these proceedings will have a material negative impact to the Partnership.

15. Subsequent Events

On March 18, 2019, SSP Holdings, LLC issued a promissory note to the Partnership in the amount of \$2.0 million. The note accrues interest at a rate of 18%.

On March 26, 2019, Trussway Holdings, LLC issued a promissory note to the Partnership in the amount of \$1.0 million. The note accrues interest at a rate of 10%.

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Notes to Consolidated Financial Statements
December 31, 2018

On March 28, 2019, the Partnership distributed equity to its partners in the aggregate amount of \$3.7 million.

On March 28, 2019, the Partnership received a \$3.7 million pay down on the outstanding Contribution Agreement.

Over the course of 2019, through the report date, HCMFA issued promissory notes to the Partnership in the aggregate amount of \$7.4 million. The notes accrue interest at a rate of 2.39%.

The Partnership has performed an evaluation of subsequent events through June 3, 2019, which is the date the consolidated financial statements were available to be issued, and has determined that there are no other material subsequent events that would require disclosure in the Partnership's consolidated financial statements.

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
As of And Year Ended December 31, 2018
Supplemental Information

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Supplemental Consolidating Balance Sheet
December 31, 2018

<i>(in thousands)</i>	Highland Capital Management, L.P.	All Other Consolidated Entities	Eliminations	Total Consolidated
Assets				
Cash and cash equivalents	\$ 2,567	\$ 2,467	\$ -	\$ 5,034
Investments at fair value (cost \$922,027)	161,939	683,247	-	845,186
Equity method investees	121,936	-	(121,936)	-
Management and incentive fees receivable	2,242	158	(7)	2,393
Due from brokers	-	598	-	598
Other assets	8,421	5,660	(4,826)	9,255
Notes and other amounts due from affiliates	176,963	-	(3,565)	173,398
Intangible assets	-	3,022	-	3,022
Fixed assets and leasehold improvements, net of accumulated depreciation of \$11,197	4,538	43	-	4,581
Total assets	\$ 478,606	\$ 695,195	\$ (130,334)	\$ 1,043,467
Liabilities and partners' capital				
Liabilities				
Accounts payable	\$ 4,838	\$ 145	\$ -	\$ 4,983
Securities sold, not yet purchased (proceeds \$26,135)	-	32,357	-	32,357
Withdrawals payable	-	57,009	-	57,009
Due to affiliates	4,542	-	(4,542)	-
Due to brokers	31,194	86,108	(742)	116,560
Due to brokers for securities purchased, not yet settled	1,640	-	-	1,640
Accrued and other liabilities	35,574	4,276	396	40,246
Notes payable	16,722	42,540	(3,510)	55,752
Investment liabilities	12,135	33,957	-	46,092
Total liabilities	106,645	256,392	(8,398)	354,639
Non-controlling interest	-	316,867	-	316,867
Commitments and contingencies				
Partners' capital	371,961	121,936	(121,936)	371,961
Total liabilities and partners' capital	\$ 478,606	\$ 695,195	\$ (130,334)	\$ 1,043,467

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Supplemental Consolidating Statement of Income
Year Ended December 31, 2018

<i>(in thousands)</i>	Highland Capital Management, L.P.	All Other Consolidated Entities	Eliminations	Total Consolidated
Revenue:				
Management fees	\$ 35,264	\$ 1,336	\$ -	\$ 36,600
Interest and investment income	4,857	10,974	-	15,831
Incentive fees	17	53	-	70
Shared services fees	9,187	-	-	9,187
Other income	1,038	1,584	-	2,622
Total revenue	50,363	13,947	-	64,310
Expenses:				
Compensation and benefits	33,670	805	-	34,475
Professional fees	14,624	3,055	-	17,679
Interest expense	1,695	3,975	-	5,670
Marketing and advertising expense	2,413	-	-	2,413
Depreciation and amortization	1,304	13	-	1,317
Investment and research consulting	1,082	-	-	1,082
Bad debt expense	7,862	-	-	7,862
Other operating expenses	6,786	3,241	-	10,027
Total expenses	69,436	11,089	-	80,525
Other Income/(Expense):				
Other income	9,816	10	-	9,826
Impairment on intangible assets	(2,830)	-	-	(2,830)
Total other income	6,986	10	-	6,996
Income/(loss) before investment and derivative activities	(12,087)	2,868	-	(9,219)
Realized and unrealized gain/(loss) on investments and derivatives:				
Net realized gain/(loss) on investments and derivatives	13,397	(44,914)	-	(31,517)
Net change in unrealized loss on investments and derivatives	(406)	(93,349)	-	(93,755)
Net realized and unrealized loss on investments and derivatives	12,991	(138,263)	-	(125,272)
Net unrealized losses from equity method investees	(74,082)	-	74,082	-
Net loss	(73,178)	(135,395)	74,082	(134,491)
Net loss attributable to non-controlling interest	-	(61,313)	-	(61,313)
Net loss attributable to Highland Capital Management, L.P.	\$ (73,178)	\$ (74,082)	\$ 74,082	\$ (73,178)

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Supplemental Unconsolidated Balance Sheet
December 31, 2018

(in thousands)

Assets

Current assets:

Cash and cash equivalents	\$	2,567
Investments at fair value (cost \$263,008*)		259,460
Equity method investees		24,415
Management and incentive fees receivable		2,242
Intangible assets		8,421
Notes and other amounts due from affiliates		176,963
Fixed assets and leasehold improvements, net of accumulated depreciation of \$11,177		4,538

Total assets	\$	478,606
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Liabilities and partners' capital

Liabilities

Accounts payable	\$	4,838
Due to affiliate		4,542
Due to brokers		31,194
Due to brokers for securities purchased not yet settled		1,640
Accrued and other liabilities		35,574
Notes payable		16,722
Investment liabilities		12,135

Total liabilities		106,645
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Partners' capital		371,961
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Total liabilities and partners' capital	\$	478,606
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*Investments, at fair value includes \$97.5 million of limited partnership interest ownership of Consolidated Investment Funds, which are discussed in Footnote 2. These entities are consolidated because the Partnership controls the general partner of the respective entities and is responsible for the daily operations of the entities.

The above information was derived from the audited December 31, 2018 consolidated financial statements of Highland Capital Management, L.P. This information should be read in conjunction with such audited financial statements.

Highland Capital Management, L.P.
(A Delaware Limited Partnership)
Supplemental Unconsolidated Statement of Income
Year Ended December 31, 2018

(in thousands)

Revenue:

Management fees	\$ 35,264
Incentive fees	17
Shared services fees	9,187
Interest and investment income	4,857
Miscellaneous income	1,038
Total revenue	<u>50,363</u>

Expenses:

Compensation and benefits	33,670
Professional fees	14,624
Marketing and advertising expense	2,413
Interest expense	1,695
Depreciation and amortization	1,304
Investment and research consulting	1,082
Bad debt expense	7,862
Other operating expenses	6,786
Total expenses	<u>69,436</u>

Other Income/(Expense):

Other income	9,816
Impairment on intangible assets	(2,830)
Total other income	6,986

Loss before investment activities (12,087)

Realized and unrealized gains/losses on investments:

Net realized gain on sale of investments	13,397
Net change in unrealized loss on investments*	(56,529)
Total realized and unrealized loss on investments	<u>(43,132)</u>

Loss from equity method investees: (17,959)

Net loss \$ (73,178)



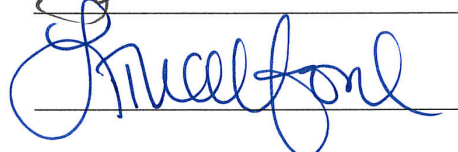
*Net change in unrealized gain on investments includes \$56.1 million of unrealized loss from holdings of limited partnership interests of Consolidated Investment Funds, which are discussed in Footnote 2. These entities are consolidated because the Partnership controls the general partner of the respective entities and is responsible for the daily operations of the entities.

The above information was derived from the audited December 31, 2018 consolidated financial statements of Highland Capital Management, L.P. This information should be read in conjunction with such audited consolidated financial statements.

EXHIBIT 35

HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.**INCUMBENCY CERTIFICATE**

I am the sole Director of STRAND ADVISORS XVI, INC., a Delaware corporation (the "**General Partner**"), the general partner of **HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.**, a Delaware limited partnership (the "**Partnership**"). In that capacity, I certify that the persons listed below have been duly appointed and qualified as, and currently are, officers of the General Partner of the Partnership. I also certify that each person listed below holds the position that is listed opposite his or her name in the General Partner, and that the signatures attached are the genuine signatures of the persons indicated. I also certify that in their capacity as officers of the General Partner, the persons listed below are authorized to execute any and all agreements on behalf of the General Partner in its capacity as the general partner of the Partnership. I further certify that in their capacity as officers of the General Partner, the persons listed below are authorized to give any party on behalf of the Partnership all notices, orders, directions, or instructions (including but not limited to written, facsimile, or oral funds transfer instructions) in connection with any transaction to which the Partnership is or in the future may be a party to in any capacity.

<u>Name of Officer</u>	<u>Title</u>	<u>Signature</u>
Dustin Norris	Executive Vice President	
Frank Waterhouse	Treasurer	
Lauren Thedford	Secretary	

WITNESS my hand to be effective as of the 11th day of April, 2019.

HIGHLAND CAPITAL MANAGEMENT FUND
ADVISORS, L.P.

By: Strand Advisors XVI, Inc., its general partner


By: 
James D. Dondero, Sole Director

EXHIBIT 36

From: Frank Waterhouse <FWaterhouse@HighlandCapital.com>
Sent: Tuesday, October 6, 2020 6:19 PM
To: Lauren Thedford <LThedford@HighlandCapital.com>; David Klos <DKlos@HighlandCapital.com>; Kristin Hendrix <KHendrix@HighlandCapital.com>
Cc: Thomas Surgent <TSurgent@HighlandCapital.com>; Jason Post <JPost@HighlandCapital.com>; Dustin Norris <DNorris@NexPointSecurities.com>; Will Mabry <WMabry@HighlandCapital.com>
Subject: RE: 15(c) Follow up (10_2_20).DOCX

No shared services outstanding. The HCMFA note is a demand note. The NexPoint note Kristin can give the end term. There was an agreement between HCMLP and HCMFA the earliest they could demand is May 2021. The attorneys think that BK doesn't change that but don't know for sure at the end of the day. The response should include as I covered in the Board meeting that both entities have the full faith and backing from Jim Dondero and to my knowledge that hasn't changed.

From: Lauren Thedford <LThedford@HighlandCapital.com>
Sent: Tuesday, October 6, 2020 6:14 PM
To: Frank Waterhouse <FWaterhouse@HighlandCapital.com>; David Klos <DKlos@HighlandCapital.com>; Kristin Hendrix <KHendrix@HighlandCapital.com>
Cc: Thomas Surgent <TSurgent@HighlandCapital.com>; Jason Post <JPost@HighlandCapital.com>; Dustin Norris <DNorris@NexPointSecurities.com>; Will Mabry <WMabry@HighlandCapital.com>
Subject: RE: 15(c) Follow up (10_2_20).DOCX

I see the below from the 6/30 financials –

NPA: Due to HCMLP and affiliates as of June 30, 2020 - 23,683,000
HCMFA: Due to HCMLP as of June 30, 2020 - 12,286

I expect the follow-up question will be regarding terms and structure of the notes and whether any of the shared services invoices are outstanding.

Draft answer below.

Are there any material outstanding amounts currently payable or due in the future (*e.g.*, notes) to HCMLP by HCMFA or NexPoint Advisors or any other affiliate that provide services to the Funds?

Response: As of June 30, 2020, \$23,683,000 remains outstanding to HCMLP and its affiliates from NexPoint and \$12,286,000 remains outstanding to HCMLP from HCMFA. The Notes between HCMLP and NexPoint come due on [DATE]. The Notes between HCMLP and HCMFA come due on [DATE]. All amounts owed by each of NexPoint and HCMFA pursuant to the shared services arrangement with HCMLP have been paid as of [DATE].

From: Frank Waterhouse <FWaterhouse@HighlandCapital.com>
Sent: Tuesday, October 6, 2020 6:05 PM
To: Lauren Thedford <LThedford@HighlandCapital.com>; David Klos <DKlos@HighlandCapital.com>; Kristin Hendrix <KHendrix@HighlandCapital.com>
Cc: Thomas Surgent <TSurgent@HighlandCapital.com>; Jason Post <JPost@HighlandCapital.com>; Dustin Norris

<DNorris@NexPointSecurities.com>; Will Mabry <WMabry@HighlandCapital.com>
Subject: RE: 15(c) Follow up (10_2_20).DOCX

It's on the balance sheet that was provided to the board as part of the 15c materials.

From: Lauren Thedford <LThedford@HighlandCapital.com>
Sent: Tuesday, October 6, 2020 6:04 PM
To: Frank Waterhouse <FWaterhouse@HighlandCapital.com>; David Klos <DKlos@HighlandCapital.com>; Kristin Hendrix <KHendrix@HighlandCapital.com>
Cc: Thomas Surgent <TSurgent@HighlandCapital.com>; Jason Post <JPost@HighlandCapital.com>; Dustin Norris <DNorris@NexPointSecurities.com>; Will Mabry <WMabry@HighlandCapital.com>
Subject: RE: 15(c) Follow up (10_2_20).DOCX

Could you provide the amounts?

Thanks

From: Frank Waterhouse <FWaterhouse@HighlandCapital.com>
Sent: Tuesday, October 6, 2020 5:53 PM
To: Lauren Thedford <LThedford@HighlandCapital.com>; David Klos <DKlos@HighlandCapital.com>; Kristin Hendrix <KHendrix@HighlandCapital.com>
Cc: Thomas Surgent <TSurgent@HighlandCapital.com>; Jason Post <JPost@HighlandCapital.com>; Dustin Norris <DNorris@NexPointSecurities.com>; Will Mabry <WMabry@HighlandCapital.com>
Subject: RE: 15(c) Follow up (10_2_20).DOCX

Yes

From: Lauren Thedford <LThedford@HighlandCapital.com>
Sent: Tuesday, October 6, 2020 5:52 PM
To: Frank Waterhouse <FWaterhouse@HighlandCapital.com>; David Klos <DKlos@HighlandCapital.com>; Kristin Hendrix <KHendrix@HighlandCapital.com>
Cc: Thomas Surgent <TSurgent@HighlandCapital.com>; Jason Post <JPost@HighlandCapital.com>; Dustin Norris <DNorris@NexPointSecurities.com>; Will Mabry <WMabry@HighlandCapital.com>
Subject: RE: 15(c) Follow up (10_2_20).DOCX

Good evening Frank, Klos, Kristin – please advise on the below in connection with the Board's follow-up request. Thanks!

Are there any material outstanding amounts currently payable or due in the future (*e.g.*, notes) to HLCMLP by HCMFA or NexPoint Advisors or any other affiliate that provide services to the Funds?

From: Lauren Thedford
Sent: Friday, October 2, 2020 2:50 PM
To: Thomas Surgent <TSurgent@HighlandCapital.com>
Cc: Jason Post <JPost@HighlandCapital.com>; Dustin Norris <DNorris@Nexpointsecurities.com>; Will Mabry <WMabry@HighlandCapital.com>; David Klos <DKlos@HighlandCapital.com>
Subject: FW: 15(c) Follow up (10_2_20).DOCX

Thomas – please see attached (and reproduced below) additional 15c follow-up questions from the Board.

1. Please provide, to the extent practicable, the contingency plans with respect to the services provided under the Shared Services Agreements in the event that the outcome of the HCMLP bankruptcy proceedings were to impact the current servicing structure. For example, has the Advisers considered any outside service providers if necessary?

Note prior question and response on related topic:

With respect to the Estimated Adviser Profitability chart (Item A.2.a in the Board book), is the "Shared Services" line the only expenses attributable to HCMLP? Has any work been done or consideration been given to the solicitation of a third party bid on performing these services or bringing them in house to HCMFA?

Response: Shared services, along with a portion of the investment professional compensation & benefits lines, are the only allocations attributable to HCMLP employees' support of the Advisers. HCMFA does not have the resources to bring these services in-house at this time, but given that HCMLP staffing levels for the provision of the shared services have remained fairly consistent and HCMLP remains capable of providing such shared services on economically reasonable terms, outsourced third-party bids have not been solicited at this time.

2. Are there any material outstanding amounts currently payable or due in the future (e.g., notes) to HLCMLP by HCMFA or NexPoint Advisors or any other affiliate that provide services to the Funds?
3. The Board notes the provision of the updated list of current co-investments provided by HCMFA/NexPoint Advisors and the Advisers' discussion, including the senior-level team in place, to address any potential conflicts of interest matters. With respect to the compliance function, please confirm that the Funds' Chief Compliance Officer overall will continue in his usual role with respect to the Funds. Are there any other potential conflicts outside of the specific co-investment matters identified?

Please let me know if you would like me to set up a call on Monday to discuss.

From: Louizos, Stacy <SLouizos@BlankRome.com>

Sent: Friday, October 2, 2020 1:54 PM

To: Dustin Norris <DNorris@NexPointSecurities.com>; Lauren Thedford <LThedford@HighlandCapital.com>

Cc: Jason Post <JPost@HighlandCapital.com>; Zornada, George <George.Zornada@klgates.com>; Charles.Miller@klgates.com; Jon-Luc.Dupuy@klgates.com

Subject: 15(c) Follow up (10_2_20).DOCX

Hi Dustin and Lauren—Please see attached follow up questions from the Trustees after the latest Board call. Happy to have a call to discuss if helpful.

Best,
Stacy

Stacy H. Louizos | BLANKROME

1271 Avenue of the Americas | New York, NY 10020

O: 212.885.5147 | F: 917.332.3028 | slouizos@blankrome.com

M: 203.918.3666

*

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EXHIBIT 45

TO BE FILED

UNDER SEAL

EXHIBIT 54

From: Kristin Hendrix
Sent: Thursday, May 02, 2019 12:33 PM
To: Hayley Eliason <HEliason@HighlandCapital.com>; Blair Roeber <BRoeber@HighlandCapital.com>
Subject: FW: HCMLP to HCMFA loan

Blair,

Here is a copy of the note for support.

Hayley – FYI for your loan tracker.

From: David Klos
Sent: Thursday, May 02, 2019 11:24 AM
To: Corporate Accounting
Subject: HCMLP to HCMFA loan

Blair,

Please send \$2,400,000 from HCMLP to HCMFA. This is a new interco loan. Kristin, can you or Hayley please prep a note for execution. I'll have further instructions later today, but please process this payment as soon as possible.

DAVID KLOS | CONTROLLER



300 Crescent Court | Suite 700 | Dallas, Texas 75201
C: 214.674.2926 | O: 972.419.4478 | F: 972.628.4147
dklos@highlandcapital.com | www.highlandcapital.com

PROMISSORY NOTE

\$2,400,000.00

May 2, 2019

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP. (“**Maker**”) promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP (“**Payee**”), in legal and lawful tender of the United States of America, the principal sum of TWO MILLION FOUR HUNDRED THOUSAND and 00/100 Dollars (\$2,400,000.00), together with interest, on the terms set forth below (the “**Note**”). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the short-term “**applicable federal rate**” (2.39%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys’ Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys’ fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

A handwritten signature in blue ink, appearing to read "Frank Waterhouse", is written over a horizontal line.

FRANK WATERHOUSE

EXHIBIT 56

From: Kristin Hendrix
Sent: Friday, May 03, 2019 3:06 PM
To: Corporate Accounting <CorporateAccounting@hcmlp.com>
Subject: HCMLP Loan to HCMFA

Blair,

Please set up a wire from HCMLP to HCMFA for \$5M as a new loan (\$4.4M should be coming in from Jim soon).

Hayley, please add this to your loan tracker. I will paper the loan.

Thanks,

Kristin Hendrix, CPA | Manager, Corporate Accounting



300 Crescent Court | Suite 700 | Dallas, Texas 75201
O: 972.628.4127 | F: 972.628.4147

khendrix@highlandcapital.com | www.highlandcapital.com



EXHIBIT 57

PROMISSORY NOTE

\$5,000,000.00

May 3, 2019

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP. (“**Maker**”) promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP (“**Payee**”), in legal and lawful tender of the United States of America, the principal sum of FIVE MILLION and 00/100 Dollars (\$5,000,000.00), together with interest, on the terms set forth below (the “**Note**”). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the short-term “**applicable federal rate**” (2.39%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys’ Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys’ fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

A handwritten signature in blue ink, appearing to read "Frank Waterhouse", is written over a horizontal line.

FRANK WATERHOUSE

EXHIBIT 59



TO: Board of Trustees or Board of Directors (as the case may be) (collectively, the “Board”) of Highland Funds I, Highland Funds II, Highland Income Fund, Highland Global Allocation Fund, NexPoint Strategic Opportunities Fund, NexPoint Real Estate Strategies Fund and NexPoint Capital, Inc.

FROM: Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. and NexPoint Securities, Inc.

RE: Supplemental 15(c) Information Request

DATE: October 23, 2020

Pursuant to your supplemental request dated October 2, 2020, Highland Capital Management Fund Advisors, L.P. (“HCMFA”), NexPoint Advisors, L.P. (“NexPoint”, and with HCMFA, each, an “Adviser”, and together, the “Advisers”) and NexPoint Securities, Inc. (“NSI” the “Distributor”) submit the following supplemental information to the Board in order to assist the Board in fulfilling its obligations under Section 15(c) of the Investment Company Act of 1940, as amended (the “1940 Act”), and to assist in the Board’s consideration of the investment advisory, and other contractual arrangements, for the funds listed on Appendix A (each, a “Fund” and, collectively, the “Funds”). References to the 2020 15(c) Response dated August 13, 2020 and the supplemental response dated September 17-18, 2020 are referred to as the “2020 15(c) Response” and “2020 Supplemental 15(c) Response”, respectively.

Your requests have been noted below, each of which is followed by our response. Unless otherwise specified, reference documents are located on Director’s Desk at the following location: Home > Documents > Corporate Documents > 15c Reference Documents.

A. Nature, Extent and Quality of Services

1. Please provide, to the extent practicable, the contingency plans with respect to the services provided under the Shared Services Agreements in the event that the outcome of the HCMLP bankruptcy proceedings were to impact the current servicing structure. For example, has the Advisers considered any outside service providers if necessary?

Response: As a result of the Highland Capital Management, L.P. (“HCMLP”) bankruptcy, NexPoint’s senior management’s plan as a backup/contingency plan is to extend employment offers to the vast majority of HCMLP’s employees by December 31, 2020. This will help ensure that there is no disruption in services to the Funds. Once we have further details of this we will advise. In the interim, the plan is to continue with existing shared services.

Representatives of HCMLP and NexPoint will be available to discuss the structure of these contingency plans, relevant employees, and communications

to current employees regarding these matters. Representatives of HCMLP and NexPoint are working to facilitate the shared use of and/or transfer of services such as the intranet, shared computer drives, and third-party contracts.

2. Are there any material outstanding amounts currently payable or due in the future (*e.g.*, notes) to HLCMLP by HCMFA or NexPoint Advisors or any other affiliate that provide services to the Funds?

Response: As of June 30, 2020, \$23,683,000 remains outstanding to HCMLP and its affiliates from NexPoint and \$12,286,000 remains outstanding to HCMLP from HCMFA. The Note between HCMLP and NexPoint comes due on December 31, 2047. The earliest the Note between HCMLP and HCMFA could come due is in May 2021. All amounts owed by each of NexPoint and HCMFA pursuant to the shared services arrangement with HCMLP have been paid as of the date of this letter. The Adviser notes that both entities have the full faith and support of James Dondero.

3. The Board notes the provision of the updated list of current co-investments provided by HCMFA/NexPoint Advisors and the Advisers' discussion, including the senior-level team in place, to address any potential conflicts of interest matters. With respect to the compliance function, please confirm that the Funds' Chief Compliance Officer overall will continue in his usual role with respect to the Funds. Are there any other potential conflicts outside of the specific co-investment matters identified?

Response: The Advisers confirm that the Funds' Chief Compliance Officer overall will continue in his usual role with respect to the Funds. As of October 14, 2020, the Funds' Chief Compliance Officer is an employee of NexPoint. Please see Exhibit A for a list of current co-investments and cross-held positions where a future conflict may arise together with Exhibit B for the list of non-HCMLP employees available to assist the Board in any future conflicts.

Exhibit A

Co-Investment Analysis

CONFIDENTIAL

Appx. 00097

Highland Capital Management, LP ("HCMLP")
 Condensed Co-Investment Analysis
 As of 9/30/20

Condensed Co-Investments ¹

Investment	HCMLP MV	Funds Managed by HCMLP MV	Retail Funds	Non-HCMLP Investment Coverage
1 Metro-Goldwyn-Mayer Inc. Class A Common Stock	\$13,085,369	\$418,019,027	\$61,820,908	Dondero
2 CCS Medical, Inc. (Chronic Care) Loan 1st Lien @ PRIME 7% 7/31/2021	-	121,166,994	47,510,599	Dondero
3 TerreStar Corporation Term Loan A @ LIBOR 11% 2/28/2022	-	49,742,043	40,159,485	Dondero
4 VST US Equity	-	41,904,280	24,381,982	Sowin
5 NXRT	10,799,003	2,228,410	21,256,955	McGranger
6 Grayson CLO, Ltd. Class II Preference Shares	-	2,201,500	18,861,500	Sowin
7 NHT/U CN	2,028,793	-	18,524,594	McGranger
8 NHF	2,208,872	2,954,619	15,808,648	Dondero
9 Advantage Sales & Marketing Inc. Term Loan (Second Lien) @ LIBOR 6.5% 7/25/2022	-	1,940,140	13,784,695	Sowin
10 Procera Networks, Inc. (aka Sandvine Corp) Initial Term Loan (First Lien) @ LIBOR 4.5% 10/3	-	1,367,373	13,681,487	Sowin
11 Gruden Acquisition, Inc. (aka Quality Distribution) ITL (First Lien) @ LIBOR 5.5% 8/18/2022	-	2,568,463	11,124,738	Sowin
12 Westchester CLO, Ltd Class I Preference Shares 144A	-	3,373,333	10,888,813	Sowin
13 HRTX	-	81,510	10,686,168	Dondero
14 Vistra Energy Corp. (fka TCEH Corp.) TXU TRA rights	-	3,494,825	10,476,054	Sowin
15 American Banknote Common	693,467	-	1,843,371	Dondero
16 American Airlines Escrow	154,650	630,365	1,444,839	Dondero
17 Ginn LA Conduit Lender, Inc. 1st Lien A CL Deposit @ PRIME 4.5% 6/8/2011	68,860	812,716	846,955	Sowin
18 TerreStar Corporation TL C @ LIBOR 11% 2/28/2022	-	25,418	553,282	Dondero
19 CCS Medical, Inc. (Chronic Care) Common	-	6,008	5,797	Dondero
Sub-Total	\$29,039,013	\$652,517,024	\$323,660,869	

Additional HCMLP Ownership of Retail Funds (non-co-investments) ²

Investment	HCMLP MV	Retail Fund MV	Funds Managed by HCMLP MV
Highland Opportunistic Credit Fund (HNRZX)	\$2,911,923	-	-
NexPoint Real Estate Strategies Fund (NRSZX)	663,982	-	-
Sub-Total	\$3,575,905	\$0	\$0

Footnote:

1 - Listing includes the following: 1) all investments held by both HCMLP and retail funds, regardless of materiality 2) investments for which retail funds hold \$10 million or greater in the aggregate and are also held by funds advised by HCMLP 3) investments for which retail funds hold ownership less than \$10 million in the aggregate, the position is private and fair valued, and are also held by funds advised by HCMLP.

2 - 'Additional HCMLP Ownership of Retail Funds' does not reflect other immaterial holdings of investments below \$5,000.

Highland Capital Management, LP ("HCMLP")
Co-Investment Analysis
As of 9/30/20

Co-Investments, excluding holdings with zero market value			
	Investment	HCMLP MV	Funds Managed by HCMLP MV Retail Funds
1	Metro-Goldwyn-Mayer Inc. Class A Common Stock	\$13,085,369	\$418,019,027
2	CCS Medical, Inc. (Chronic Care) Loan 1st Lien @ PRIME 7% 7/31/2021	-	121,166,994
3	TerreStar Corporation Term Loan A @ LIBOR 11% 2/28/2022	-	49,742,043
4	VST US Equity	-	41,904,280
5	NXRT	10,799,003	2,228,410
6	Grayson CLO, Ltd. Class II Preference Shares	-	2,201,500
7	NHT/UCN	2,028,793	-
8	NHF	2,208,872	2,954,619
9	Advantage Sales & Marketing Inc. Term Loan (Second Lien) @ LIBOR 6.5% 7/25/2022	-	1,940,140
10	Proterra Networks, Inc. (aka Sandvine Corp) Initial Term Loan (First Lien) @ LIBOR 4.5% 10/31/2025	-	1,367,373
11	Gruden Acquisition, Inc. (aka Quality Distribution) ITL (First Lien) @ LIBOR 5.5% 8/18/2022	-	2,568,463
12	Westchester CLO, Ltd Class I Preference Shares 144A	-	3,373,333
13	HRTX	-	81,510
14	Vistra Energy Corp. (fka TCEH Corp.) TXU TRA rights	-	3,494,825
15	Traverse Midstream Partners LLC Advance @ LIBOR 5.5% 9/27/2024	-	25,916,705
16	VM Consolidated, Inc. (aka American Traffic Solutions) B-1 1st Lien Non-ext @ LIBOR 3.25% 2/28/2025	-	2,719,702
17	Edelman Financial Center, LLC, The (fka Flight Debt Merger Sub Inc.) Initial Term Loan (Second Lien) @ LIBOR 6.75% 7/20/2026	-	125,340
18	Forest City Enterprises, L.P. Replacement TL @ LIBOR 3.5% 12/8/2025	-	2,222,324
19	Avaya Inc. B TL @ LIBOR 4.25% 12/15/2024	-	1,357,685
20	MPMQ Appraisal Rights Claims	-	527,460
21	USS Ultimate Holdings, Inc. (aka United Site Services, Inc.) Initial Term Loan (First Lien) @ LIBOR 3.75% 8/25/2024	-	2,877,263
22	PSC Industrial Holdings Corp. Term Loan (First Lien) @ LIBOR 3.75% 10/11/2024	-	3,685,775
23	EnergySolutions, LLC (aka Envirocare of Utah, LLC) Initial Term Loan @ LIBOR 3.75% 5/9/2025	-	7,194,271
24	Truck Hero, Inc. Initial TL 2nd Lien @ LIBOR 8.25% 4/21/2025	-	645,557
25	Envision Healthcare Corporation Initial Term Loan @ LIBOR 3.75% 10/10/2025	-	2,854,870
26	AERI	-	35,310
27	MDPX 2014-15A Float - 01/2026 - DR - 55818WAG0 @ LIBOR 5.4400 1/27/2026	-	1,249,500
28	Brentwood CLO Ltd Class II Preference Shares	-	7,424,000
29	io-Ann Stores, LLC Initial Loan @ LIBOR 5% 10/20/2023	-	2,354,854
30	Advantage Sales & Marketing Inc. Initial Term Loan (First Lien) @ LIBOR 3.25% 7/23/2021	-	1,896,829
31	Radnet Management, Inc. T B-1 L @ LIBOR 3.75% 6/30/2023	-	1,601,339
32	Fort Dearborn Holding Company, Inc. Initial Term Loan (First Lien) @ LIBOR 4% 10/19/2023	-	1,394,305
33	Sound Inpatient Physicians, Inc. Initial Term Loan (Second Lien) @ LIBOR 6.75% 6/26/2026	-	326,460
34	Liberty CLO, Ltd. Preferred	-	8,339,310
35	UDFI	-	1,291,306
36	Auris Luxembourg III S.a r.l. Facility B2 @ LIBOR 3.75% 2/27/2026	-	1,891,886
37	BIO	-	171,133
38	Dayco Products LLC - (Mark IV Industries, Inc.) Term Loan @ LIBOR 4.25% 5/19/2023	-	1,587,518
39	Rockwall CDO, Ltd. Preferred Shares	-	5,211,000
40	AVYA	-	30,877,250
41	RWIC NOT LISTED	-	579,000
42	American Banknote Common	693,467	-
43	TCW 2019-2A D2A Float - 10/02032 - 87242BAS9 @ 4.89 10/20/2032	-	1,250,000
44	Red River CLO, Ltd. Red River CLO	-	3,797,722
45	American Airlines Escrow	154,650	630,365
46	Refinitiv US Holdings Inc. (fka Financial & Risk US Holdings, Inc.) Initial Dollar Term Loan @ LIBOR 3.25% 10/1/2025	-	1,950,070
47	Scientific Games International, Inc. Initial Term B-5 Loan @ LIBOR 2.75% 8/14/2024	-	3,715,025
48	ACIS 2015-6A Zero Coupon - 05/2027 - SUB - 00452AAD6 @ Zero Coupon 0.0000 5/1/2027	-	8,296,000
49	CIFC 2015-5A DR Float - 10/02027 - 12550NAI7 @ 5.55 10/25/2027	-	1,109,375
50	General Nutrition Centers, Inc. FILO Term Loan @ PRIME 8% 12/31/2022	-	487,190
51	Change Healthcare Holdings, LLC closing date TL @ LIBOR 2.5% 3/1/2024	-	2,709,671
52	CIFC 2016-1A D2R Float - 10/02031 - 17180TAW2 @ 4.43 10/21/2031	-	980,000
53	TMO	-	201,775
54	ACIS 2015-6A Float - 05/2027 - D - 00452PAR8 @ LIBOR 3.7700 5/1/2027	-	1,810,000
55	Edelman Financial Center, LLC, The (fka Flight Debt Merger Sub Inc.) Initial Term Loan (First Lien) @ LIBOR 3% 7/21/2025	-	3,929,415
56	AHT1 2018-KEYS E Float - 05/02035 - 04410CAN9 @ 4.15 05/15/2035	-	695,663
57	ABERO	-	905,975
58	Ginn LA Conduit Lender, Inc. 1st Lien A CL Deposit @ PRIME 4.5% 6/8/2011	68,860	812,716
59	Bausch Health Companies Inc. (fka Valeant Pharmaceuticals International, Inc.) Initial Term Loan @ LIBOR 3% 6/2/2025	-	3,010,042
60	CSC Holdings, LLC (fka CSC Holdings Inc. (Cablevision)) March 2017 Refinancing Term Loan @ LIBOR 2.25% 7/17/2025	-	1,142,030
61	Hub International Limited Initial Term Loan @ LIBOR 3% 4/25/2025	-	1,270,064
62	Nielsen Finance LLC (VNU, Inc.) Class B-4 Term Loan @ LIBOR 2% 10/4/2023	-	480,085
63	PRTK	-	100,626
64	MPH Acquisition Holdings LLC Initial Term Loan @ LIBOR 2.75% 6/7/2023	-	3,767,027
65	VICI Properties 1 LLC Term B Loan @ LIBOR 1.75% 12/20/2024	-	969,035
66	McAfee, LLC Term B USD Loan @ LIBOR 3.75% 9/30/2024	-	1,469,387
67	IRB Holding Corp. (aka Arby's / Buffalo Wild Wings) 2020 Replacement Term B Loan @ Libor 2.75% 2/5/2025	-	531,087
68	Global Medical Response, Inc. (aka Air Medical) 2018 Term Loan @ LIBOR 3.25% 4/28/2022	-	969,179
69	CityCenter Holdings, LLC Term B Loan @ LIBOR 2.25% 4/18/2024	-	344,250
70	Miyos Limited (aka Almonde/Tahoe, Finastra USA) Dollar Term Loan (First Lien) @ LIBOR 3.5% 6/13/2024	-	920,265
71	Golden Nugget, Inc. (aka Landry's Inc.) TL @ LIBOR 2.5% 10/4/2023	-	383,374
72	H.B. Fuller Company Commitment @ LIBOR 2% 10/20/2024	-	250,488
73	Lightstone Holdco LLC Refinancing Term B Loan @ LIBOR 3.75% 1/30/2024	-	4,262,832
74	AHC	-	73,700
75	Crown Finance US, Inc. (aka Cineworld Group plc) Initial Dollar Tranche Term Loan @ LIBOR 2.5% 2/28/2025	-	11,999,814
76	Calpine Corporation Term Loan (2015) @ LIBOR 2.25% 1/15/2024	-	375,085
77	TerreStar Corporation TL C @ LIBOR 11% 2/28/2022	-	25,418
78	TransDigm Inc. Tranche E Refinancing Term Loan @ LIBOR 2.25% 5/30/2025	-	6,149,465
79	Tronox Finance LLC Initial Dollar Term Loan (First Lien) @ LIBOR 3% 9/23/2024	-	3,327,701
80	Solera, LLC (Solera Finance, Inc.) Dollar TL @ LIBOR 2.75% 3/3/2023	-	446,555
81	AlixPartners, LLP 2017 Refinancing Term Loan @ LIBOR 2.5% 4/4/2024	-	3,254,084
82	Hearst Communications, Inc. (fka Clear Channel Communications, Inc.) 6.375% - 05/2026 - 45174HBCO FIX 6.375% 5/1/2026	-	1,446
83	Fieldwood Energy LLC Closing Date Loan (First Lien) @ LIBOR 5.25% 4/11/2022	-	10,941,771
84	HLF 1X Floating - 08/2014 - C1 - 43037QAE9 @ LIBOR 0.0000 8/2/2018	-	318,583
85	Ineos US Finance LLC New 2024 Dollar Term Loan @ LIBOR 2% 4/1/2024	-	2,131,748
86	CGMS 2019-4A D Float - 01/02033 - 14317WAA6 @ 7.65 01/15/2033	-	930,500
87	Bi's Wholesale Club, Inc. Tranche B Term Loan (First Lien) @ LIBOR 2% 2/3/2024	-	515,535
88	Titan Acquisition Limited (aka Husky IMS International Ltd.) Initial Term Loan @ LIBOR 3% 3/28/2025	-	923,108
89	Plantronics, Inc. Initial Term B Loan @ LIBOR 2.5% 7/2/2025	-	12,145,824
90	SS&C Technologies Holdings, Inc. Term B-5 Loan @ LIBOR 2.25% 4/16/2025	-	952,120
91	Berry Global, Inc. (fka Berry Plastics Corporation) Term W Loan @ LIBOR 2% 10/1/2022	-	339,055
92	Applied Systems, Inc. Closing Date Term Loan (First Lien) @ LIBOR 3.25% 9/19/2024	-	1,693,433
93	SolarWinds Holdings, Inc. 2018 Refinancing Term Loan (First Lien) @ LIBOR 2.75% 2/5/2024	-	956,532
94	VAHA 2004-1A Variable - 08/2012 - 91914QAA4 @ Variable 0.0000 8/1/2012	-	375,000
95	SRC	-	1,212
96	COLL	-	62,398
97	Texas Competitive Electric Holdings Company LLC (TXU) Escrow Loan Extended @ LIBOR 0%	-	2,079
98	AAMRQ escrow Common Stock	-	57,400
99	Tecton 9 PERP	-	467,201
100	ACRG/A/U CN	-	41,887
101	NRG	-	26,498
102	FGI Operating Company, LLC Common	-	51,252
103	Fieldwood Energy LLC Common1	-	15,420
104	ACRG/B/U CN	-	15,022
105	Lightstone Holdco LLC Refinancing Term C Loan @ LIBOR 3.75% 1/30/2024	-	240,430
106	SMTA (Delisted 01/02/2020)	-	93,852
107	CCS Medical, Inc. (Chronic Care) Common	-	6,008
Total		\$29,039,013	\$878,908,335

Additional HCMLP Ownership of Retail Funds (non-co-investments)¹

Investment	HCMLP MV	Retail Fund MV	Funds Managed by HCMLP MV
Highland Opportunistic Credit Fund (HNRZX)	\$2,911,923	-	-
NexPoint Real Estate Strategies Fund (NRSZX)	663,982	-	-
Total	\$3,575,905	0.00	\$0

Footnote:

1 - 'Additional HCMLP Ownership of Retail Funds' does not reflect other immaterial holdings of investments below \$5,000.

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Appx. 00099

Exhibit B**Non-HCMLP Employees**

Name	Role	Current Title	Employed By
Jim Dondero	Senior Investment Team Member	Partner	NPA
Jason Post	Chief Compliance Officer	Chief Compliance Officer	NPA
Joe Sowin	Senior Investment Team Member	Co-CIO and Head of Global Equity Trading	HCMFA
Brad Heiss	Senior Investment Team Member	Managing Director	HCMFA
Matt McGraner	Senior Investment Team Member	Managing Director	NPA
Dustin Norris	Fund Officer/Liaison	Head of Distribution and Chief Product Strategist	NPA
DC Sauter	Legal	General Counsel	NPA
Eric Holt	Compliance	Chief Compliance Officer, Affiliated Broker Dealers	NSI
David Willmore	Accounting/Operations	Senior Manager, Real Estate Accounting	NXRT
Paul Richards	Valuation	Director, Real Estate	NPA
Jackie Graham	PR/Marketing	Investor Relations Manager	NPA

HCMFA Highland Capital Management Fund Advisors, L.P.
 NPA NexPoint Advisors, L.P.
 NSI NexPoint Securities, Inc.
 NXRT NexPoint Residential Trust, Inc.

Appendix A

Open-End Funds

Highland Funds I:

1. Highland Healthcare Opportunities Fund
2. Highland/iBoxx Senior Loan ETF
3. Highland Opportunistic Credit Fund (*in liquidation*)
4. Highland Merger Arbitrage Fund

Highland Funds II:

5. Highland Small-Cap Equity Fund
6. Highland Socially Responsible Equity Fund
7. Highland Fixed Income Fund (*sub-advised*)
8. Highland Total Return Fund (*sub-advised*)

Closed-End Funds

9. NexPoint Capital, Inc.
 - a. BDC REIT Sub, LLC (*REIT Subsidiary*)
10. NexPoint Strategic Opportunities Fund
 - a. NexPoint Real Estate Opportunities, LLC (*REIT Subsidiary*)
 - b. NexPoint Real Estate Capital, LLC (*REIT Subsidiary*)
11. Highland Income Fund
 - a. HFRO Sub, LLC (*Credit Subsidiary*)
 - b. NFRO REIT Sub, LLC (*REIT Subsidiary*)
12. Highland Global Allocation Fund
 - a. GAF REIT, LLC (*REIT Subsidiary*)

Interval Funds:

13. NexPoint Real Estate Strategies Fund
 - a. NRESF REIT Sub, LLC (*REIT Subsidiary*)

EXHIBIT 94

1 BURGER
2 IN THE UNITED STATES BANKRUPTCY COURT
3 FOR THE NORTHERN DISTRICT OF TEXAS
4 DALLAS DIVISION

5 -----
6 IN RE:

7 Chapter 11
8 HIGHLAND CAPITAL
9 MANAGEMENT, L.P., CASE NO.
10 19-34054-SGI11

11 Debtor.
12 -----

13 HIGHLAND CAPITAL MANAGEMENT, L.P.,

14 Plaintiff,

15 vs. Adversary
16 Proceeding No.
17 HIGHLAND CAPITAL MANAGEMENT 21-03000-sgj
18 FUND ADVISORS, L.P.; NEXPOINT
19 ADVISORS, L.P.; HIGHLAND
20 INCOME FUND; NEXPOINT
21 STRATEGIC OPPORTUNITIES FUND;
22 NEXPOINT CAPITAL, INC.; and
23 CLO HOLDCO, LTD.,

24 Defendants.
25 -----

26
27 REMOTE DEPOSITION OF
28 PEET BURGER
29 July 30, 2021
30
31
32
33
34
35

36 Reported by: Susan S. Klinger, RMR-CRR, CSR

37 Job No. 197393

<p>Page 2</p> <p>1 BURGER</p> <p>2</p> <p>3</p> <p>4 July 30, 2021</p> <p>5 10:01 a.m.</p> <p>6</p> <p>7</p> <p>8</p> <p>9 Remote Deposition of PEET BURGER, held</p> <p>10 before Susan S. Klinger, a Registered Merit</p> <p>11 Reporter and Certified Realtime Reporter of the</p> <p>12 State of Texas.</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 3</p> <p>1 BURGER</p> <p>2 A P P E A R A N C E S:</p> <p>3 (All appearances via Zoom.)</p> <p>4 Attorneys for Debtor:</p> <p>5 BY: John Morris, Esq.</p> <p>6 PACHULSKI STANG ZIEHL & JONES</p> <p>7 780 Third Avenue</p> <p>8 New York, New York 10017</p> <p>9 Attorneys for the PwC and the Witness:</p> <p>10 BY: John Wander, Esq.</p> <p>11 VINSON & ELKINS</p> <p>12 2001 Ross Avenue</p> <p>13 Dallas, Texas 75201</p> <p>14 Attorneys for John Dondero, Highland Capital</p> <p>15 Management Services, NexPoint:</p> <p>16 BY: Michael Aigen, Esq.</p> <p>17 STINSON</p> <p>18 3102 Oak Lawn Avenue</p> <p>19 Dallas, Texas 75219</p> <p>20</p> <p>21 Attorneys for NexPoint Advisors, LP, Highland</p> <p>22 Capital Fund Advisors:</p> <p>23 BY: Thomas Berghman, Esq.</p> <p>24 MUNSCH HARDT KOPF & HARR</p> <p>25 500 North Akard Street</p> <p>Dallas, Texas 75201</p> <p>Also Present:</p> <p>Ms. La Asia Canty</p>																								
<p>Page 4</p> <p>1 BURGER</p> <p>2 I N D E X</p> <p>3</p> <table border="0"> <tr> <td>4 WITNESS</td> <td>PAGE</td> </tr> <tr> <td>5 PEET BURGER</td> <td></td> </tr> <tr> <td>6 EXAMINATION BY MR. MORRIS</td> <td>5</td> </tr> <tr> <td>7 EXAMINATION BY MR. AIGEN</td> <td>76</td> </tr> <tr> <td>8 EXAMINATION BY MR. MORRIS</td> <td>92</td> </tr> </table> <p>9</p> <p>10 E X H I B I T S</p> <table border="0"> <tr> <td>11 No.</td> <td>Page</td> </tr> <tr> <td>12 Exhibit 1 Management representation</td> <td>18</td> </tr> <tr> <td>13 Letter, 6/3/19</td> <td></td> </tr> <tr> <td>14 Exhibit 2 2017 Financial Statements</td> <td>30</td> </tr> <tr> <td>15 Exhibit 3 2017 Workpapers</td> <td>41</td> </tr> <tr> <td>16 Exhibit 4 2018 Financial Statements</td> <td>47</td> </tr> <tr> <td>17 Exhibit 5 2018 Workpapers</td> <td>55</td> </tr> </table> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	4 WITNESS	PAGE	5 PEET BURGER		6 EXAMINATION BY MR. MORRIS	5	7 EXAMINATION BY MR. AIGEN	76	8 EXAMINATION BY MR. MORRIS	92	11 No.	Page	12 Exhibit 1 Management representation	18	13 Letter, 6/3/19		14 Exhibit 2 2017 Financial Statements	30	15 Exhibit 3 2017 Workpapers	41	16 Exhibit 4 2018 Financial Statements	47	17 Exhibit 5 2018 Workpapers	55	<p>Page 5</p> <p>1 BURGER</p> <p>2 PROCEEDINGS</p> <p>3 PEET BURGER,</p> <p>4 having been first duly sworn testified as</p> <p>5 follows:</p> <p>6 EXAMINATION</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. Good morning. Can you state your</p> <p>9 name for the record, please?</p> <p>10 A. I can. Peet Burger.</p> <p>11 Q. Are you currently employed,</p> <p>12 Mr. Burger?</p> <p>13 A. Yes.</p> <p>14 Q. By whom?</p> <p>15 A. PricewaterhouseCoopers.</p> <p>16 Q. And what is your title at</p> <p>17 PricewaterhouseCoopers?</p> <p>18 A. I'm an audit partner.</p> <p>19 Q. When did you become an audit partner</p> <p>20 at PricewaterhouseCoopers?</p> <p>21 A. January 1st of 2014.</p> <p>22 Q. Have you been an audit partner at</p> <p>23 PricewaterhouseCoopers on a consistent basis</p> <p>24 since January 1st, 2014?</p> <p>25 A. Yes, I have.</p>
4 WITNESS	PAGE																								
5 PEET BURGER																									
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<p style="text-align: right;">Page 6</p> <p>1 BURGER</p> <p>2 Q. In that capacity, have you overseen</p> <p>3 the audits for Highland Capital Management,</p> <p>4 L.P.?</p> <p>5 A. Yes, I did.</p> <p>6 Q. Just briefly, were you employed by</p> <p>7 PricewaterhouseCoopers prior to the time you</p> <p>8 became an audit partner at the beginning of</p> <p>9 2014?</p> <p>10 A. Yes, I have. Do I need to give the</p> <p>11 dates?</p> <p>12 Q. Can you just tell me when you first</p> <p>13 joined PwC?</p> <p>14 A. I joined in January of 1997 in our</p> <p>15 South African firm. Yes, that's correct.</p> <p>16 Q. When did you join the audit group?</p> <p>17 A. In January of 1997.</p> <p>18 Q. So you have been with</p> <p>19 PricewaterhouseCoopers' audit unit on a</p> <p>20 consistent basis for more than 20 years; is</p> <p>21 that fair?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. When did you personally begin</p> <p>24 working on the Highland Capital Management,</p> <p>25 L.P. audits, do you recall?</p>	<p style="text-align: right;">Page 7</p> <p>1 BURGER</p> <p>2 A. Somewhere in 2013. I would say</p> <p>3 April, 2013.</p> <p>4 Q. And were you the audit partner in</p> <p>5 charge of the Highland engagement from 2013</p> <p>6 until the time the 2018 financial statements</p> <p>7 were completed?</p> <p>8 A. This is specific to Highland Capital</p> <p>9 Management, L.P., yes.</p> <p>10 Q. I'm just going to refer to Highland</p> <p>11 Capital Management, L.P. as Highland going</p> <p>12 forward; is that okay?</p> <p>13 A. Yes.</p> <p>14 Q. Have you ever been deposed before?</p> <p>15 A. No.</p> <p>16 Q. Okay.</p> <p>17 A. No.</p> <p>18 Q. I apologize, I should have started</p> <p>19 with some ground rules, but I'm trying to be</p> <p>20 mindful of the time. It is important that you</p> <p>21 allow me to finish my questions before you</p> <p>22 begin your answers; is that okay?</p> <p>23 A. Sure.</p> <p>24 Q. And if I begin my next question</p> <p>25 before you begin – before you finish your</p>
<p style="text-align: right;">Page 8</p> <p>1 BURGER</p> <p>2 answer, will you let me know that?</p> <p>3 A. Sure.</p> <p>4 Q. Do you understand that the court</p> <p>5 reporter is taking down every word that we say?</p> <p>6 A. Yes.</p> <p>7 Q. If you want to break at any time,</p> <p>8 will you let me know?</p> <p>9 A. Sure.</p> <p>10 Q. If there is anything that you don't</p> <p>11 understand, if there is a question that I ask</p> <p>12 that you either don't understand or you think</p> <p>13 is ambiguous in some way, will you let me know</p> <p>14 that?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. From PricewaterhouseCoopers'</p> <p>17 perspective, what is the purpose of an audit?</p> <p>18 A. To provide reasonable assurance in</p> <p>19 in terms of the auditing and accounting</p> <p>20 standards.</p> <p>21 Q. What standards are you referring to?</p> <p>22 A. In this case Generally Accepted</p> <p>23 Auditing Standards.</p> <p>24 Q. What are Generally Accepted Auditing</p> <p>25 Standards, if you know?</p>	<p style="text-align: right;">Page 9</p> <p>1 BURGER</p> <p>2 A. It is a set of rules basically</p> <p>3 governed by the AICPA of what – considered</p> <p>4 what is the sort of conglomerate of rules on</p> <p>5 your professional standards of engagement to</p> <p>6 sign an audit opinion.</p> <p>7 Q. And do I have this correctly, that</p> <p>8 the purpose of the audit is to provide</p> <p>9 reasonable assurance that the financial</p> <p>10 statements are in compliance with Generally</p> <p>11 Accepted Auditing Standards?</p> <p>12 MR. WANDER: Did you say assurance</p> <p>13 or insurance?</p> <p>14 Q. Assurance?</p> <p>15 A. Yes, assurance, yes. The procedures</p> <p>16 performed by us in terms of Generally Accepted</p> <p>17 Auditing Standards and the financials itself is</p> <p>18 presented in terms of Generally Accepted</p> <p>19 Accounting Practice.</p> <p>20 Q. Okay. And are those standards or</p> <p>21 practices familiar to you in the course of your</p> <p>22 duties?</p> <p>23 A. Yes, it is.</p> <p>24 Q. Okay. Can you describe for me</p> <p>25 generally the process that PwC undertook in</p>

<p>Page 10</p> <p>1 BURGER</p> <p>2 connection with its auditing of the Highland</p> <p>3 financial statements? Is there, you know, a</p> <p>4 process that you follow?</p> <p>5 A. Yes, there is. I mean, it is a</p> <p>6 pretty long process which starts all the way</p> <p>7 from the planning to completion and you know,</p> <p>8 through the execution which audit approach</p> <p>9 outlines all the relevant standards of the</p> <p>10 procedures that we're supposed perform from the</p> <p>11 planning, execution and completion stage.</p> <p>12 Q. And is that something that you share</p> <p>13 with Highland so that they understand the</p> <p>14 process?</p> <p>15 A. We don't share our workpapers and</p> <p>16 absolutely every single part of that, but they</p> <p>17 – I mean, they know what we are looking for in</p> <p>18 the sense of obviously for – we make requests</p> <p>19 for information. And if the information is not</p> <p>20 clear, we need to explain to them why we are</p> <p>21 asking them for it.</p> <p>22 Q. And how soon after the completion of</p> <p>23 the fiscal year does PwC begin the process that</p> <p>24 leads to the final audit?</p> <p>25 A. We start this engagement in its</p>	<p>Page 11</p> <p>1 BURGER</p> <p>2 fieldwork stage in around about April after –</p> <p>3 April after the unit.</p> <p>4 Q. And what do you mean when you use</p> <p>5 the phrase fieldwork?</p> <p>6 A. Our execution phase.</p> <p>7 Q. Is that the time when you begin to</p> <p>8 send informational requests to Highland?</p> <p>9 A. No, we send it through the planning</p> <p>10 phase as well, which the planning phase is the</p> <p>11 phase where you get engaged to go through all</p> <p>12 the planning and setting up the procedures that</p> <p>13 you are supposed to perform for the – for the</p> <p>14 execution phase. And you can also do some of</p> <p>15 the execution transaction work during that</p> <p>16 period to save yourself from having to spend</p> <p>17 that time in April and May.</p> <p>18 Q. And when does the planning stage</p> <p>19 begin?</p> <p>20 A. Each year can be slightly different,</p> <p>21 but in this case, this was around about the</p> <p>22 October – September, October.</p> <p>23 Q. So the planning would begin in the</p> <p>24 fall of each fiscal year and –</p> <p>25 A. Correct.</p>
<p>Page 12</p> <p>1 BURGER</p> <p>2 Q. Is that fair?</p> <p>3 A. That's fair.</p> <p>4 Q. And then during the planning stage,</p> <p>5 PwC would make information requests to</p> <p>6 Highland. Do I have that right?</p> <p>7 A. You have got that correct.</p> <p>8 Q. And then in response to that,</p> <p>9 Highland would feed information to PwC for</p> <p>10 PwC's review. Do I have that right?</p> <p>11 A. Correct.</p> <p>12 Q. And then the fieldwork is – is the</p> <p>13 next step the fieldwork?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Do you recall during the time</p> <p>16 that you were the audit partner did you have a</p> <p>17 primary contact at Highland for purposes of the</p> <p>18 planning and the execution phases of the audit?</p> <p>19 A. There were more than one individual</p> <p>20 we dealt with, but I recall there was a primary</p> <p>21 contact which facilitated sort of – you know,</p> <p>22 the – which facilitated all of our</p> <p>23 communication.</p> <p>24 Q. And who was that?</p> <p>25 A. That was David Klos.</p>	<p>Page 13</p> <p>1 BURGER</p> <p>2 Q. And who besides Mr. Klos were the</p> <p>3 primary points of contact?</p> <p>4 A. Frank Waterhouse is the CFO and</p> <p>5 Kristin Hendrix who, for the lack of a better</p> <p>6 word was the – the sort of chief – the</p> <p>7 accountant.</p> <p>8 Q. The accountant?</p> <p>9 A. Yes.</p> <p>10 Q. Yes. And how many people typically</p> <p>11 were on the Price Waterhouse team for purposes</p> <p>12 of the Highland audits?</p> <p>13 A. It depends on the phase of the</p> <p>14 audit, but at the biggest part of the audit the</p> <p>15 execution phase we were, including me I would</p> <p>16 say six or seven people.</p> <p>17 Q. Okay. And how would</p> <p>18 PricewaterhouseCoopers obtain the information</p> <p>19 that it needed to prepare the audited financial</p> <p>20 statements?</p> <p>21 A. Sorry. Just to make sure, say</p> <p>22 obtain the information. We – we have a – I</p> <p>23 mean, I did this over seven years. It morphed</p> <p>24 over time, but we have a – a site, a secure</p> <p>25 site called Connect. And I think towards the</p>

<p>Page 14</p> <p>1 BURGER</p> <p>2 end we used that for them to upload</p> <p>3 information.</p> <p>4 Previously Highland had its own</p> <p>5 secure site where we would raise a request and</p> <p>6 they would upload the information on the secure</p> <p>7 site.</p> <p>8 Q. Okay. Did PricewaterhouseCoopers</p> <p>9 rely on management to provide the information</p> <p>10 that would enable PwC to prepare the audited</p> <p>11 financial statements?</p> <p>12 A. We did.</p> <p>13 Q. Did PwC ever make any site visits to</p> <p>14 Highland in connection with the audits?</p> <p>15 A. We did.</p> <p>16 Q. And during those visits, was it</p> <p>17 typical that PricewaterhouseCoopers might have</p> <p>18 follow-up requests for information?</p> <p>19 MR. AIGEN: Objection, form.</p> <p>20 A. Yes.</p> <p>21 Q. Did PwC ever provide drafts of the</p> <p>22 audit reports to Highland for their review</p> <p>23 prior to the time they were finalized?</p> <p>24 A. If you mean audit reports, do you</p> <p>25 mean the one- or two-page opinion that I signed</p>	<p>Page 15</p> <p>1 BURGER</p> <p>2 or do you mean the financial statements?</p> <p>3 Q. I apologize, thank you for the</p> <p>4 clarification.</p> <p>5 I mean, the financial statements and</p> <p>6 the notes accompanying the financial</p> <p>7 statements?</p> <p>8 A. They compile that and that is their</p> <p>9 responsibility, so they provide us with that</p> <p>10 document.</p> <p>11 Q. Okay. So the five or six pages of</p> <p>12 financial statements and all of the notes are</p> <p>13 compiled by Highland, not by PwC?</p> <p>14 A. Correct, yeah, correct.</p> <p>15 Q. And did PwC have an opportunity to</p> <p>16 review and comment on the drafts of the</p> <p>17 financial statements on the accompanying notes?</p> <p>18 A. Yes, we do.</p> <p>19 Q. And did PwC in the course of its</p> <p>20 engagement ask the questions that PwC thought</p> <p>21 was relevant in order to give reasonable</p> <p>22 assurance that the financial statements were in</p> <p>23 accordance with Generally Accepted Auditing</p> <p>24 Standards?</p> <p>25 MR. AIGEN: Objection, form.</p>
<p>Page 16</p> <p>1 BURGER</p> <p>2 MR. WANDER: You mean, GAAP, not</p> <p>3 GAAS?</p> <p>4 Q. I mean, it is auditing not</p> <p>5 accounting; right? So it is Generally Accepted</p> <p>6 Accounting Standards, do I have that right?</p> <p>7 MR. WANDER: The audited – the</p> <p>8 financials are in accordance with GAAP.</p> <p>9 The audit is done in accordance with GAAS.</p> <p>10 Q. Thank you for the clarification, so</p> <p>11 let me rephrase the question.</p> <p>12 Did PwC ask the questions that it</p> <p>13 believed were necessary in order to provide</p> <p>14 reasonable assurance that the financial</p> <p>15 statements were in conformance with GAAP?</p> <p>16 MR. AIGEN: Objection, form.</p> <p>17 A. We did.</p> <p>18 Q. Did PwC receive representation</p> <p>19 letters from Highland in connection with each</p> <p>20 audit?</p> <p>21 A. Yeah, we did.</p> <p>22 Q. And are you personally familiar with</p> <p>23 the form of management representation letter</p> <p>24 that Highland provided to PwC each year?</p> <p>25 A. Yes, I am.</p>	<p>Page 17</p> <p>1 BURGER</p> <p>2 Q. Was it part of your personal</p> <p>3 responsibilities to review the management</p> <p>4 representation letters?</p> <p>5 A. It was.</p> <p>6 Q. From PwC's perspective, what was the</p> <p>7 purpose of the management representation</p> <p>8 letters?</p> <p>9 A. It is an opportunity for us to get</p> <p>10 management to make certain representations of</p> <p>11 us – in terms of scope of what is expected of</p> <p>12 us in an audit.</p> <p>13 Q. And was that representation letter</p> <p>14 required by PwC in order for PwC to sign-off on</p> <p>15 the audit?</p> <p>16 A. It is, it was.</p> <p>17 Q. And is it fair to say that PwC</p> <p>18 relied on the management representation letters</p> <p>19 when it decided to sign-off on the audit?</p> <p>20 A. We did.</p> <p>21 Q. I would like to put up on the screen</p> <p>22 a document that I have marked as Exhibit 1,</p> <p>23 which is the June 3rd, 2019 management</p> <p>24 representation letter.</p> <p>25 (Exhibit 1 marked.)</p>

<p>Page 18</p> <p>1 BURGER</p> <p>2 Q. Mr. Burger, so –</p> <p>3 MR. AIGEN: Sorry was this produced?</p> <p>4 I just want to make sure, is there a Bates</p> <p>5 label on this for the record?</p> <p>6 MR. MORRIS: I don't know but it was</p> <p>7 used in Mr. Dondero's deposition.</p> <p>8 MR. AIGEN: There is a Bates label.</p> <p>9 Q. So Mr. Burger, this is a little</p> <p>10 awkward. Usually in a deposition I would be in</p> <p>11 the room with you and you would have the</p> <p>12 document in front of you and it would be easy</p> <p>13 for you to review the document. Since we can't</p> <p>14 do that, and I don't know that you have this</p> <p>15 particular document in front of you, we've put</p> <p>16 it up on the screen.</p> <p>17 I'm going to ask you a few questions</p> <p>18 about it, but I strongly encourage you, I</p> <p>19 really request that you let me know if you</p> <p>20 believe that there are other portions of the</p> <p>21 document that you need to review in order to</p> <p>22 either refresh your recollection or to put my</p> <p>23 question into context, okay?</p> <p>24 We're just going to have to make due</p> <p>25 with the technology, but with that background,</p>	<p>Page 19</p> <p>1 BURGER</p> <p>2 you know, let's – let's go to the – to the</p> <p>3 page ending in 419?</p> <p>4 Do you see there that there are two</p> <p>5 signatures?</p> <p>6 A. Correct.</p> <p>7 Q. And do you understand that those are</p> <p>8 the signatures of James Dondero and Frank</p> <p>9 Waterhouse?</p> <p>10 A. Yes, correct.</p> <p>11 Q. Okay. If we could go back to the</p> <p>12 top of the document, do you understand that</p> <p>13 this is the management representation letter</p> <p>14 that was provided to PwC by Mr. Dondero and</p> <p>15 Mr. Waterhouse on June 3rd, 2019?</p> <p>16 A. Yes.</p> <p>17 Q. Do you know why Mr. Waterhouse and</p> <p>18 Mr. Dondero were the people who signed this</p> <p>19 letter?</p> <p>20 A. Starting with Mr. Waterhouse, he is</p> <p>21 the responsible party from management in the</p> <p>22 sense of being the CFO and Mr. Dondero as the</p> <p>23 general partner because the entity is a limited</p> <p>24 partner and we expect the general partner to</p> <p>25 sign the rep letter.</p>
<p>Page 20</p> <p>1 BURGER</p> <p>2 Q. Do you know who drafted this letter?</p> <p>3 A. We did.</p> <p>4 Q. Is this a form of management</p> <p>5 representation that PwC typically prepares in</p> <p>6 the ordinary course of its audits?</p> <p>7 A. Yes, it is derived from a standard</p> <p>8 template.</p> <p>9 Q. And you see in the first paragraph</p> <p>10 there is a reference to the balance sheet date.</p> <p>11 Do I have that right?</p> <p>12 A. Correct.</p> <p>13 Q. And for this particular management</p> <p>14 representation letter, the balance sheet is for</p> <p>15 the fiscal year ending December 31st, 2018;</p> <p>16 correct?</p> <p>17 A. Correct.</p> <p>18 Q. We can scroll down to the bottom,</p> <p>19 but there is – stop right there.</p> <p>20 There is a series of representations</p> <p>21 that are made in this letter. Do you</p> <p>22 understand that?</p> <p>23 A. I do.</p> <p>24 Q. And if we scroll down to, I guess,</p> <p>25 the page ending in 18, you will see that there</p>	<p>Page 21</p> <p>1 BURGER</p> <p>2 is 50 separate representations that are made by</p> <p>3 Mr. Waterhouse and Mr. Dondero, not including</p> <p>4 the subparts. Do you see that?</p> <p>5 A. I do.</p> <p>6 MR. MORRIS: And thank you, La Asia,</p> <p>7 if we can go back to the top.</p> <p>8 Q. So even though the audit letter was</p> <p>9 for the fiscal year ending December 31st, 2018,</p> <p>10 do you see in the sentence just before general</p> <p>11 that Mr. Dondero and Mr. Waterhouse confirmed</p> <p>12 based on their then current knowledge that each</p> <p>13 of the 50 representations were still correct as</p> <p>14 of June 3rd, 2019?</p> <p>15 A. I do.</p> <p>16 Q. Okay. And is that a standard</p> <p>17 practice of PwC to require management to</p> <p>18 confirm the accuracy of the representations not</p> <p>19 just as of the end of the fiscal year, but</p> <p>20 carrying through to the date of the completion</p> <p>21 of the audit?</p> <p>22 A. It is.</p> <p>23 Q. And why does PwC require that the</p> <p>24 representations be carried forward to the date</p> <p>25 of the completion of the audit?</p>

<p>Page 22</p> <p>1 BURGER</p> <p>2 A. Because per Generally Accepted</p> <p>3 Auditing Standards we have to consider material</p> <p>4 events occurring after year-end but prior to</p> <p>5 our opinion date or prior to on our opinion</p> <p>6 date.</p> <p>7 Q. Okay. And do you see in the middle</p> <p>8 of the first page there there is a paragraph</p> <p>9 that begins "certain representations"?</p> <p>10 A. Yes.</p> <p>11 Q. And you see that there is a</p> <p>12 definition of items that are considered</p> <p>13 material?</p> <p>14 A. Yes.</p> <p>15 Q. Do you know why the management</p> <p>16 representation letter included a definition for</p> <p>17 items considered material?</p> <p>18 A. Because we cannot reasonably – we,</p> <p>19 the basis of an audit is our reasonable</p> <p>20 assurance with deals with our definition –</p> <p>21 which deals with materiality. So if we expect</p> <p>22 management to represent to us, we give them a</p> <p>23 sense of what we consider to be material.</p> <p>24 Q. Okay. And did Highland ever express</p> <p>25 any concerns about PwC's definition of</p>	<p>Page 23</p> <p>1 BURGER</p> <p>2 materiality?</p> <p>3 A. Not that I can recall.</p> <p>4 Q. Did PwC rely on Mr. Dondero and</p> <p>5 Mr. Waterhouse to provide all information</p> <p>6 concerning items considered material as defined</p> <p>7 in this letter?</p> <p>8 MR. AIGEN: Objection, form.</p> <p>9 A. We did.</p> <p>10 Q. Are you generally aware that from</p> <p>11 time-to-time Highland loaned money to</p> <p>12 Mr. Dondero and certain affiliated entities in</p> <p>13 exchange for promissory notes?</p> <p>14 A. I am.</p> <p>15 Q. Can we call those promissory notes</p> <p>16 the affiliated party notes?</p> <p>17 A. That is fine.</p> <p>18 Q. For purposes of the audits, were the</p> <p>19 makers obligations under the affiliated party</p> <p>20 notes considered receivables of Highland?</p> <p>21 A. Yes, receivables of Highland Capital</p> <p>22 Management, L.P.</p> <p>23 Q. Okay. Can we go to the page that is</p> <p>24 ending in 413?</p> <p>25 I'm just going to ask you a few</p>
<p>Page 24</p> <p>1 BURGER</p> <p>2 questions about some of the representations</p> <p>3 here. Do you see, Mr. Burger, representation</p> <p>4 number 11?</p> <p>5 A. I do.</p> <p>6 Q. Does representation number 11 apply</p> <p>7 to the affiliated party notes?</p> <p>8 A. It does.</p> <p>9 Q. Was it PwC's understanding that</p> <p>10 Mr. Dondero and Mr. Waterhouse represented that</p> <p>11 the affiliate party notes represented bona fide</p> <p>12 claims against the makers for transactions</p> <p>13 arising on or before the balance sheet date?</p> <p>14 MR. WANDER: Objection, form.</p> <p>15 A. Correct.</p> <p>16 Q. This is one of the 50</p> <p>17 representations that Mr. Dondero and</p> <p>18 Mr. Waterhouse confirmed as of June 30th, 2019;</p> <p>19 correct?</p> <p>20 A. June 3rd, yes, correct.</p> <p>21 Q. Thank you for the clarification.</p> <p>22 Does the last sentence of representation number</p> <p>23 11 mean that all affiliated party notes were</p> <p>24 current as of June 3rd, 2019?</p> <p>25 A. It does.</p>	<p>Page 25</p> <p>1 BURGER</p> <p>2 Q. Stated another way, none of the</p> <p>3 affiliated notes were in default as of June</p> <p>4 30th, 2019; correct?</p> <p>5 A. That's correct.</p> <p>6 Q. All right. If we can go to page</p> <p>7 416, please.</p> <p>8 Take a look at representation number</p> <p>9 32 at the top of the page. Do you have an</p> <p>10 understanding of what representation number 32</p> <p>11 means?</p> <p>12 A. Yeah, that is a representation where</p> <p>13 if we were to find any misstatements which does</p> <p>14 not meet the level of materiality, we would put</p> <p>15 that on what we call a summary of uncorrected</p> <p>16 misstatements. And management would –</p> <p>17 management would defer to the fact that they do</p> <p>18 not consider those adjustments necessary in</p> <p>19 terms of neutrality.</p> <p>20 Q. Did PwC understand that in</p> <p>21 representation number 32 Mr. Dondero and</p> <p>22 Mr. Waterhouse represented that basically if</p> <p>23 they got anything wrong it was not material?</p> <p>24 MR. AIGEN: Objection, form.</p> <p>25 A. That is correct.</p>

<p>Page 26</p> <p>1 BURGER</p> <p>2 Q. And why did PwC request this</p> <p>3 particular representation?</p> <p>4 A. Because if anything gets sort of</p> <p>5 found out to be a potential let's call it error</p> <p>6 to the financial statements, part of the</p> <p>7 standards require us to assert from management</p> <p>8 their view that it is not material.</p> <p>9 Q. Okay. Did PwC rely on</p> <p>10 representation number 32 when signing off on</p> <p>11 the audit?</p> <p>12 MR. AIGEN: Objection, form.</p> <p>13 A. We did.</p> <p>14 Q. Let's look at representation number</p> <p>15 34. Can you tell me what that means from PwC's</p> <p>16 perspective?</p> <p>17 A. It is a assessment of completeness.</p> <p>18 So in other words, management asserting or,</p> <p>19 sorry, representing to us that they are not</p> <p>20 aware of any material transactions or</p> <p>21 agreements or – agreements being out there</p> <p>22 that wasn't recorded in the financial</p> <p>23 statements.</p> <p>24 Q. And why did PwC want this material</p> <p>25 representation?</p>	<p>Page 27</p> <p>1 BURGER</p> <p>2 A. Under as – under standards it is</p> <p>3 not our duty to go out and look for necessarily</p> <p>4 fraud. And you know, it is on the completeness</p> <p>5 of transactions we do rely on management to let</p> <p>6 us know if they were material transactions.</p> <p>7 Q. Did PwC rely on representing –</p> <p>8 withdrawn.</p> <p>9 Did PwC rely on representation</p> <p>10 number 34 when signing off on the audit?</p> <p>11 A. We did.</p> <p>12 Q. Let's take a look at representation</p> <p>13 35D. If you can just read that to yourself for</p> <p>14 a moment?</p> <p>15 A. Excuse me, did you say B or D?</p> <p>16 Q. D as in dog?</p> <p>17 A. D, okay, okay.</p> <p>18 Q. Is it fair to say that in</p> <p>19 representation number 35D, as in dog,</p> <p>20 Mr. Dondero and Mr. Waterhouse represented that</p> <p>21 all material transactions with related parties</p> <p>22 have been properly reported and disclosed in</p> <p>23 the consolidated financial statements?</p> <p>24 A. That's correct.</p> <p>25 Q. Did PwC request this particular</p>
<p>Page 28</p> <p>1 BURGER</p> <p>2 representation?</p> <p>3 A. We did.</p> <p>4 Q. Why?</p> <p>5 A. Again, because it is important under</p> <p>6 alleged party disclosures specifically all</p> <p>7 disclosures but related party specific that if</p> <p>8 you have material transactions or events that</p> <p>9 those be disclosed. And again, we – we do</p> <p>10 rely on management to also take ownership for</p> <p>11 that.</p> <p>12 Q. Okay. Can we go to the next page,</p> <p>13 please, page ending in 417? Okay, right there.</p> <p>14 And take a look at representation number 36,</p> <p>15 please.</p> <p>16 A. Okay, okay.</p> <p>17 Q. Can you tell me from PwC's</p> <p>18 perspective what representation 36 means?</p> <p>19 A. Again, for management to let us know</p> <p>20 or assert to us who the related parties are.</p> <p>21 Q. Is it fair to say that in management</p> <p>22 representation number 36 Mr. Dondero and</p> <p>23 Mr. Waterhouse represented that they had</p> <p>24 disclosed, among other things, all related</p> <p>25 party transactions of which they were aware?</p>	<p>Page 29</p> <p>1 BURGER</p> <p>2 A. Correct.</p> <p>3 Q. And did PwC rely on that</p> <p>4 representation when it signed off on the audit?</p> <p>5 A. We did.</p> <p>6 Q. Go to page 419, please. Okay. Just</p> <p>7 before the signature line there is a sentence</p> <p>8 that begins, "to the best of our knowledge."</p> <p>9 Do you see that?</p> <p>10 A. Correct.</p> <p>11 Q. Can you just read that to yourself?</p> <p>12 A. Okay.</p> <p>13 Q. Can you tell me from PwC's</p> <p>14 perspective what that sentence means?</p> <p>15 A. It means if there were events that</p> <p>16 occurred after the balance sheet date, before</p> <p>17 the opinion date that required disclosure, that</p> <p>18 such disclosures had been made.</p> <p>19 Q. And why did – is that</p> <p>20 representation one that is required by GAAP?</p> <p>21 A. It is – it is a GAAS principle, not</p> <p>22 a GAAP.</p> <p>23 Q. And did PwC rely on that</p> <p>24 representation in the last sentence when it</p> <p>25 signed off on the audits?</p>

<p>Page 30</p> <p>1 BURGER</p> <p>2 A. We did.</p> <p>3 Q. Let's move to the 2017 financial</p> <p>4 statements. Can we please put up the next</p> <p>5 exhibit.</p> <p>6 (Exhibit 2 marked.)</p> <p>7 Q. Again, Mr. Burger, I will just</p> <p>8 remind you that if at any time you believe you</p> <p>9 need to see any other portion of the document</p> <p>10 in order to capably and fully answer the</p> <p>11 question that I ask, just let me know, okay?</p> <p>12 MR. WANDER: John, he has a hard</p> <p>13 copy of this one in front of him.</p> <p>14 Q. Beautiful. Maybe it would be easier</p> <p>15 for you to just take it out and the rest of us</p> <p>16 will just look on the screen.</p> <p>17 MR. MORRIS: Thank you, John.</p> <p>18 Q. Do you have the 2017 audited</p> <p>19 financial statements in front of you, sir?</p> <p>20 A. I do.</p> <p>21 Q. And did you personally lead PwC's</p> <p>22 efforts in completing the audit for the debtors</p> <p>23 for Highland's 2017 financial statements?</p> <p>24 A. Would you mind repeating the</p> <p>25 question?</p>	<p>Page 31</p> <p>1 BURGER</p> <p>2 Q. Did you personally lead PwC's</p> <p>3 efforts in auditing Highland's 2017 financial</p> <p>4 statements?</p> <p>5 A. I did.</p> <p>6 Q. Do you recall any deviations from</p> <p>7 the process that you described earlier in</p> <p>8 connection with the preparation of Highland's</p> <p>9 2017 financial statements?</p> <p>10 A. I do not.</p> <p>11 Q. Can we go to page 2, please, right</p> <p>12 there. Do you see in the top half of the</p> <p>13 screen there is a list of assets?</p> <p>14 A. I do.</p> <p>15 Q. And one of those – one of those</p> <p>16 assets is identified as notes and other amounts</p> <p>17 due from affiliates. Do you see that?</p> <p>18 A. I do.</p> <p>19 Q. And do you know what that relates</p> <p>20 to?</p> <p>21 A. So that is the consolidated amount</p> <p>22 of Highland Capital Management, L.P. with all</p> <p>23 its affiliates of notes and other amounts that</p> <p>24 are due from affiliates as defined.</p> <p>25 Q. Do you know why the notes and other</p>
<p>Page 32</p> <p>1 BURGER</p> <p>2 amounts due from affiliates are carried as</p> <p>3 assets on Highland's balance sheets?</p> <p>4 A. Because it meets the definition of</p> <p>5 an asset.</p> <p>6 Q. And what is the definition of the</p> <p>7 asset – withdrawn.</p> <p>8 What is the definition of an asset</p> <p>9 that causes the notes and other amounts due</p> <p>10 from affiliates to appear on the asset portion</p> <p>11 of the balance sheet?</p> <p>12 A. This is amounts in the forms of</p> <p>13 notes or receivables that the entity has title</p> <p>14 to in the form of an asset, or the classic</p> <p>15 definition of an asset is you are entitled to</p> <p>16 the asset and there is reasonable assurance of</p> <p>17 the recoverability of the asset.</p> <p>18 Q. Did anybody from Highland ever</p> <p>19 dispute that the notes and other amounts due</p> <p>20 from affiliates should be carried on Highland's</p> <p>21 balance sheet as assets?</p> <p>22 MR. AIGEN: Objection, form.</p> <p>23 A. Sorry?</p> <p>24 MR. WANDER: If you understand, you</p> <p>25 can answer.</p>	<p>Page 33</p> <p>1 BURGER</p> <p>2 A. No, no, they did not.</p> <p>3 Q. And that is because these are</p> <p>4 Highland's balance sheets; correct?</p> <p>5 A. Correct.</p> <p>6 Q. Highland, in fact, prepared the</p> <p>7 document that we're looking at right now;</p> <p>8 correct?</p> <p>9 A. Correct, we did not.</p> <p>10 Q. And Highland made the decision to</p> <p>11 record the notes and other amounts due from</p> <p>12 other affiliates as assets on its own balance</p> <p>13 sheet; right?</p> <p>14 MR. AIGEN: Objection, form.</p> <p>15 A. Right.</p> <p>16 Q. Did PwC ever have any reason to</p> <p>17 question the carrying of the notes and other</p> <p>18 amounts due from affiliates as assets on</p> <p>19 Highland's balance sheets?</p> <p>20 A. We did not.</p> <p>21 Q. Is my math right here that the</p> <p>22 balance sheet shows that as of the end of 2017</p> <p>23 notes and other amounts due from affiliates</p> <p>24 constituted more than 10 percent of Highland's</p> <p>25 assets?</p>

<p>Page 34</p> <p>1 BURGER</p> <p>2 A. That's correct.</p> <p>3 Q. Okay. If we could just scroll down</p> <p>4 to the bottom of the page. Little further,</p> <p>5 yeah, right there.</p> <p>6 Do you see there is a reference that</p> <p>7 says, quote, the accompanying notes are an</p> <p>8 integral part of these consolidated financial</p> <p>9 statements, closed quote?</p> <p>10 A. I do.</p> <p>11 Q. What does that mean?</p> <p>12 A. That is to draw the attention for</p> <p>13 the reader of not reading this page in a</p> <p>14 stand-alone basis, because there are further</p> <p>15 explanations required to the amounts in the</p> <p>16 footnotes.</p> <p>17 Q. Okay. Let's go to page 28 of the</p> <p>18 document. Okay. Do you see that there is a</p> <p>19 Section 9 entitled related party transactions?</p> <p>20 A. I do.</p> <p>21 Q. And can you describe for me your</p> <p>22 understanding of why there is a note dedicated</p> <p>23 to related party transactions?</p> <p>24 A. It is a GAAP requirement for</p> <p>25 financial statements to disclose material</p>	<p>Page 35</p> <p>1 BURGER</p> <p>2 related-party relationships and transactions.</p> <p>3 Q. If we can go to page 30, please, and</p> <p>4 just scroll straight down so Mr. Burger can see</p> <p>5 what he's got front of him, if we can go to</p> <p>6 page 30.</p> <p>7 Page 30 has a subheading to note 9</p> <p>8 called notes and other amounts due from</p> <p>9 affiliates. Do you see that?</p> <p>10 A. Correct.</p> <p>11 Q. Okay. And do I have it –</p> <p>12 withdrawn.</p> <p>13 Highland prepared all of the</p> <p>14 information that is set forth in this section</p> <p>15 of note 9; is that correct?</p> <p>16 MR. AIGEN: Objection, form.</p> <p>17 A. I did.</p> <p>18 Q. Is it fair to say that this portion</p> <p>19 of note 9 is intended to describe obligations</p> <p>20 due to the debtor by affiliates?</p> <p>21 MR. AIGEN: Objection, form.</p> <p>22 A. That's correct.</p> <p>23 Q. Let me ask a different question to</p> <p>24 deal with Michael's objection.</p> <p>25 Can you tell me, Mr. Burger, what</p>
<p>Page 36</p> <p>1 BURGER</p> <p>2 information is conveyed in the section called</p> <p>3 notes and other amounts due from affiliates?</p> <p>4 MR. AIGEN: Objection, form.</p> <p>5 MR. WANDER: You can answer.</p> <p>6 A. I can answer, sorry.</p> <p>7 The purpose of this footnote is to</p> <p>8 strike out out – because if you look at the</p> <p>9 balance sheet you just see notes and you have</p> <p>10 no idea who that is from, which amounts and</p> <p>11 what the basic terms are.</p> <p>12 Q. Is it your understanding that this</p> <p>13 section of note 9 sets forth the amounts due</p> <p>14 and owing by each affiliate as of December</p> <p>15 31st, 2017?</p> <p>16 A. That's correct.</p> <p>17 Q. And are the amounts included – are</p> <p>18 those amounts included in the line item that we</p> <p>19 just looked at in the balance sheet called</p> <p>20 notes and other amounts due from affiliates?</p> <p>21 A. Correct.</p> <p>22 Q. Do you know who calculated the</p> <p>23 amounts due and owing by each affiliate as of</p> <p>24 December 31st, 2017?</p> <p>25 A. It was management.</p>	<p>Page 37</p> <p>1 BURGER</p> <p>2 Q. Okay. Did management ever tell PwC</p> <p>3 at any time prior to June – withdrawn.</p> <p>4 Did management ever tell PwC at any</p> <p>5 time prior to PwC's signing off on the audited</p> <p>6 financial statements for 2017 that there was</p> <p>7 anything inaccurate about this section of the</p> <p>8 notes?</p> <p>9 MR. AIGEN: Objection, form.</p> <p>10 A. They did not.</p> <p>11 Q. Each of the paragraph ends with a</p> <p>12 sentence that may differ only in as to whether</p> <p>13 it is singular or plural, but it says quote,</p> <p>14 the fair value of the partnership's outstanding</p> <p>15 notes receivable approximates the carrying</p> <p>16 value of the notes receivable. Do you see</p> <p>17 that?</p> <p>18 A. Correct.</p> <p>19 Q. And we can scroll down a little bit</p> <p>20 just so you can – you have got the document in</p> <p>21 front of you. I would just ask you to confirm</p> <p>22 that each paragraph ends with the same sentence</p> <p>23 except for the last paragraph. And does it,</p> <p>24 sir?</p> <p>25 A. Yes, it is on each paragraph for</p>

<p>Page 38</p> <p>1 BURGER</p> <p>2 that section of the notes except the paragraph</p> <p>3 starting on December 21st, 2015.</p> <p>4 Q. Do you have an understanding of what</p> <p>5 that sentence means?</p> <p>6 A. That sentence means that these notes</p> <p>7 are per GAAP, the notes are supposed to be</p> <p>8 recorded at fair value and the assertion is</p> <p>9 that the carrying value is considered a</p> <p>10 reasonable proxy for fair value.</p> <p>11 Q. I'm sorry, what is fair value in</p> <p>12 this context?</p> <p>13 A. Fair value of all assets would be</p> <p>14 what you consider to be the reasonable value</p> <p>15 for exchange of the asset.</p> <p>16 Q. And then what is the carrying value?</p> <p>17 How does that differ from the carrying value?</p> <p>18 A. Carrying value is the -- is a</p> <p>19 contractual, is the term of the contractual</p> <p>20 amount. In other words, whatever their loan</p> <p>21 plus accrued interest minus payments. And fair</p> <p>22 value is -- is basically the concept of this</p> <p>23 sentence is stating that the fair value of the</p> <p>24 approximate or reasonable proxy for carrying</p> <p>25 value in its (inaudible).</p>	<p>Page 39</p> <p>1 BURGER</p> <p>2 Q. So is it fair to say that based on</p> <p>3 this portion of note 9, the debtors' financial</p> <p>4 statements -- withdrawn.</p> <p>5 Is it fair to say that based on this</p> <p>6 portion of note 9, Highland is saying that the</p> <p>7 fair value of the promissory notes from the</p> <p>8 affiliates was approximately equal to the</p> <p>9 principal and interest then due under the</p> <p>10 notes?</p> <p>11 MR. AIGEN: Objection, form.</p> <p>12 A. That's correct.</p> <p>13 Q. Is it fair to say that when the</p> <p>14 audit -- withdrawn.</p> <p>15 Is it fair to say that -- no,</p> <p>16 withdrawn.</p> <p>17 At the time the audit was completed</p> <p>18 for 2017, did PwC have any reason to discount</p> <p>19 the value of any of the notes described on page</p> <p>20 30 or 31?</p> <p>21 A. We did not.</p> <p>22 Q. Okay. Can we go to page 41, please.</p> <p>23 If you scroll down a little bit you will see</p> <p>24 there is a section entitled subsequent events</p> <p>25 which is note 16. Do you see that?</p>
<p>Page 40</p> <p>1 BURGER</p> <p>2 A. Correct.</p> <p>3 Q. Okay. What is this section intended</p> <p>4 to capture?</p> <p>5 A. This is supposed to capture any</p> <p>6 significant material events that occurred after</p> <p>7 the balance sheet that requires disclosure.</p> <p>8 Q. And is the information described</p> <p>9 here information that was provided by Highland</p> <p>10 Capital?</p> <p>11 A. Yeah, correct, by management.</p> <p>12 Q. This section notes that Mr. Dondero</p> <p>13 issued promissory notes to the partnership in</p> <p>14 the amount of \$11.7 million in 2018. Do you</p> <p>15 see that?</p> <p>16 A. I do.</p> <p>17 Q. Those obligations are not included</p> <p>18 in the balance sheet that we looked at earlier</p> <p>19 for the period ending December 31st, 2017;</p> <p>20 correct?</p> <p>21 A. That's correct.</p> <p>22 Q. The notes issued by Mr. Dondero are</p> <p>23 the only material subsequent event that PwC was</p> <p>24 informed about; is that correct?</p> <p>25 A. Correct.</p>	<p>Page 41</p> <p>1 BURGER</p> <p>2 Q. Let's go to the 2017 workpapers, if</p> <p>3 we can call it the next exhibit, please.</p> <p>4 (Exhibit 3 marked.)</p> <p>5 Q. All right. I've put up on the</p> <p>6 screen what I believe are PwC's workpapers in</p> <p>7 connection with the 2017 audit as it pertains</p> <p>8 to notes and other amounts due from affiliates.</p> <p>9 Is that an accurate way to describe this</p> <p>10 particular document?</p> <p>11 A. Yes, it would be a workpaper that we</p> <p>12 retain in our file.</p> <p>13 Q. Was it prepared in connection with</p> <p>14 the 2017 audit?</p> <p>15 A. Yes, this one was.</p> <p>16 Q. And when I use the phrase "2017</p> <p>17 audit," I'm specifically talking about the</p> <p>18 audit that was prepared for the financial</p> <p>19 statements for the fiscal year ending December</p> <p>20 31st, 2017. Do you understand that?</p> <p>21 A. Correct.</p> <p>22 Q. Okay. Who prepared this particular</p> <p>23 document?</p> <p>24 A. Who prepared it?</p> <p>25 Q. I apologize, who prepared it?</p>

<p>Page 42</p> <p>1 BURGER</p> <p>2 A. Sorry, Hilda Garcia.</p> <p>3 Q. Hilda Garcia, is she employed by</p> <p>4 PwC?</p> <p>5 A. She is.</p> <p>6 Q. And what is her title?</p> <p>7 A. She is a senior associate now. She</p> <p>8 would have been a senior associate back then as</p> <p>9 well.</p> <p>10 Q. Does she report to you or to</p> <p>11 somebody else?</p> <p>12 A. She reports to me.</p> <p>13 Q. And are you responsible for</p> <p>14 overseeing Ms. Garcia's work?</p> <p>15 A. I am.</p> <p>16 Q. And what is the purpose of this</p> <p>17 document?</p> <p>18 A. The purpose of this document is to</p> <p>19 layout what are the amounts that makes up the</p> <p>20 line item that is on the balance sheet of</p> <p>21 HCMLP. And then the audit procedure is</p> <p>22 performed to gain comfort over those – the</p> <p>23 existence of those amounts based on</p> <p>24 materiality.</p> <p>25 Q. And did PwC prepare workpapers of</p>	<p>Page 43</p> <p>1 BURGER</p> <p>2 this type in the ordinary course of its</p> <p>3 business?</p> <p>4 A. We do.</p> <p>5 Q. And did PwC prepare this particular</p> <p>6 workpaper in the ordinary course of its</p> <p>7 preparation of Highland's 2017 audit?</p> <p>8 A. We did.</p> <p>9 Q. Okay. Can we go to the tab that is</p> <p>10 marked as detailed, if you look at the bottom?</p> <p>11 Do you have that, sir?</p> <p>12 A. Yes, I have.</p> <p>13 Q. Is that tab intended to list all of</p> <p>14 the – of the notes and other amounts due from</p> <p>15 affiliates that were outstanding at the end of</p> <p>16 the fiscal year?</p> <p>17 A. Correct.</p> <p>18 Q. And is this information – where did</p> <p>19 PwC get the information that is set forth on</p> <p>20 the detail tab?</p> <p>21 A. It is from management from the trial</p> <p>22 balance.</p> <p>23 Q. For the record, can you just tell me</p> <p>24 what a trial balance is?</p> <p>25 A. So that is a summary document</p>
<p>Page 44</p> <p>1 BURGER</p> <p>2 listing out the balances of all accounts from</p> <p>3 the general ledger that is used to produce the</p> <p>4 set of financial statements.</p> <p>5 Q. And was the trial balance made</p> <p>6 available to PwC by Highland in connection with</p> <p>7 its audit work?</p> <p>8 A. It was.</p> <p>9 Q. The next tab is marked credit risk</p> <p>10 analysis. Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. What is the purpose of the credit</p> <p>13 risk analysis?</p> <p>14 A. The purpose of this is that if you</p> <p>15 think about a receivable or any amount due it</p> <p>16 is about intent and ability. And this is where</p> <p>17 we deal with ability to ask ourself the</p> <p>18 question is the counterparty reasonably able to</p> <p>19 repay the amounts.</p> <p>20 Q. And did PwC conclude in 2000 – in</p> <p>21 connection with the 2017 audit that the makers</p> <p>22 of the notes set forth on this particular slide</p> <p>23 had the ability to pay?</p> <p>24 A. In our opinion, yes.</p> <p>25 Q. Okay. And did PwC base that opinion</p>	<p>Page 45</p> <p>1 BURGER</p> <p>2 on the information that was provided by</p> <p>3 management?</p> <p>4 MR. AIGEN: Objection, form.</p> <p>5 A. Partly management and partly our own</p> <p>6 due diligence.</p> <p>7 Q. Okay. The next tab is results</p> <p>8 template. Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Can you just explain to me what that</p> <p>11 page is, if we could scroll to the top, please?</p> <p>12 A. This – there are a number of notes</p> <p>13 that are being dealt with. This – so if you</p> <p>14 go back to the detail tab, those are the</p> <p>15 individual notes that makes up the amount that</p> <p>16 ties to the back of the financial statement.</p> <p>17 And there are relevant tabs here that deal with</p> <p>18 a number of these loans. In preparation for</p> <p>19 this, we focused on due from HCMSI as that is</p> <p>20 under question.</p> <p>21 Q. Why is due from HCMSI under</p> <p>22 question?</p> <p>23 A. That is my understanding of what the</p> <p>24 deposition relates to.</p> <p>25 MR. WANDER: When he says in</p>

<p>Page 46</p> <p>1 BURGER</p> <p>2 preparation for this, he means in</p> <p>3 preparation for the deposition he reviewed</p> <p>4 this piece of it, the HCMSI. Not the rest</p> <p>5 of the notes, just HCMSI.</p> <p>6 Q. Okay. So, so but with respect to</p> <p>7 this particular page, is there an analysis that</p> <p>8 PwC is undertaking? Does this reflect an –</p> <p>9 withdrawn.</p> <p>10 Does this page reflect an analysis</p> <p>11 that PwC did?</p> <p>12 MR. AIGEN: Objection, form.</p> <p>13 A. If you add the other relevant tabs</p> <p>14 to it, yes. So in other words, some of them</p> <p>15 link to other tabs. Some of them have</p> <p>16 individual documentation as referenced in the</p> <p>17 marked legends.</p> <p>18 Q. And then there are tabs for the</p> <p>19 individual maker of each set of notes. Do I</p> <p>20 have that right?</p> <p>21 A. Correct.</p> <p>22 Q. All right. Let's go to the 2018</p> <p>23 financial statements, please. Are you familiar</p> <p>24 with Highland's audited financial statements</p> <p>25 for the period ending December 31st, 2018?</p>	<p>Page 47</p> <p>1 BURGER</p> <p>2 A. I am.</p> <p>3 MR. AIGEN: Sorry to interrupt. Are</p> <p>4 you marking this? I'm trying to keep</p> <p>5 track, is this –</p> <p>6 MR. MORRIS: Yes, I apologize, this</p> <p>7 will be Exhibit 4.</p> <p>8 (Exhibit 4 marked.)</p> <p>9 MR. AIGEN: 4, okay.</p> <p>10 Q. And did you oversee the preparation</p> <p>11 of the audited financial statements on behalf</p> <p>12 of PwC for the period ending December 31st,</p> <p>13 2018?</p> <p>14 A. Correction, not preparation, we</p> <p>15 don't prepare any of these documents.</p> <p>16 Q. Let – I apologize, let me restate</p> <p>17 the question.</p> <p>18 Did you oversee PwC's audit of</p> <p>19 Highland's financial statements for the period</p> <p>20 ending December 31st, 2018?</p> <p>21 A. Yeah, I did.</p> <p>22 Q. Okay. Do you recall any deviations</p> <p>23 from the process you described earlier in</p> <p>24 connection with the preparation of the 2018</p> <p>25 audited financials?</p>
<p>Page 48</p> <p>1 BURGER</p> <p>2 A. No, I do not.</p> <p>3 Q. Can we go to the third page of the</p> <p>4 document right there. This document is dated,</p> <p>5 if you look at the bottom, June 3rd, 2019. Do</p> <p>6 you see that?</p> <p>7 A. I do.</p> <p>8 Q. And that was the same date as the</p> <p>9 management representation letter that we looked</p> <p>10 at earlier, do you recall that? We can pull it</p> <p>11 up.</p> <p>12 A. No, I do.</p> <p>13 Q. Is it a coincidence that they both</p> <p>14 have the same date?</p> <p>15 A. No, it is not. We require that to</p> <p>16 be the same.</p> <p>17 Q. And why do you require that the</p> <p>18 management representation letter and the report</p> <p>19 of independent auditors be issued on the same</p> <p>20 day?</p> <p>21 A. This is – this is the date that we</p> <p>22 effectively consider these financials available</p> <p>23 to be issued. And under standards, we are</p> <p>24 required to consider all subsequent events and</p> <p>25 representations up to this date. So therefore,</p>	<p>Page 49</p> <p>1 BURGER</p> <p>2 we cannot accept a date of, let's call it June</p> <p>3 2nd or 1st or earlier from management's</p> <p>4 representation.</p> <p>5 Q. Is – is the report that is set out</p> <p>6 here required by either GAAS or GAAP?</p> <p>7 A. This is – GAAS requires the audit</p> <p>8 opinion to be – to be the document whereby we</p> <p>9 report to the general partner on our – on our</p> <p>10 audit.</p> <p>11 Q. And does PwC have an internal</p> <p>12 process by which it determines whether or not</p> <p>13 to sign-off on – on any particular client's</p> <p>14 audit?</p> <p>15 A. We do.</p> <p>16 Q. Can you describe that process for me</p> <p>17 generally?</p> <p>18 A. From an acceptance phase of the</p> <p>19 client or do you mean the content of their</p> <p>20 opinion?</p> <p>21 Q. The content of the opinion, thank</p> <p>22 you.</p> <p>23 A. Yes. So there is a framework that</p> <p>24 we follow on going back to whether there –</p> <p>25 whether we consider two things. Whether there</p>

<p>Page 50</p> <p>1 BURGER</p> <p>2 are material uncorrected misstatements to the</p> <p>3 financials or material deviations from required</p> <p>4 disclosures. So in other words, are the</p> <p>5 financials reasonable and accurate in terms of</p> <p>6 GAAP, and were we able to perform all the</p> <p>7 procedures. So in other words there weren't</p> <p>8 any undue scope limitations which – which got</p> <p>9 us to a point we weren't able to perform the</p> <p>10 audit and fulfill our professional duty.</p> <p>11 If the answer to those are that we</p> <p>12 fulfill both then we would give what we call an</p> <p>13 unqualified or a clean opinion.</p> <p>14 Q. And is there an opinion committee</p> <p>15 that is – that is dedicated to this process?</p> <p>16 A. No, it is – if it is a clean</p> <p>17 opinion then it is the partner and if</p> <p>18 applicable the second partner on the engagement</p> <p>19 is called. If there is anything which goes</p> <p>20 away from an unqualified opinion, in any</p> <p>21 deviation, then there is a whole consultation</p> <p>22 process with our national office.</p> <p>23 Q. And did you personally approve this</p> <p>24 opinion letter?</p> <p>25 A. I did, that is my signature.</p>	<p>Page 51</p> <p>1 BURGER</p> <p>2 Q. Okay. Let's go to page 2, please,</p> <p>3 consolidated balance sheet.</p> <p>4 Do you see, again, there is the</p> <p>5 notes and other amounts due from affiliates?</p> <p>6 A. I do.</p> <p>7 Q. And does this just carry over from</p> <p>8 the prior years subject to any payments or</p> <p>9 additional notes subject to any changes since</p> <p>10 the end of the prior fiscal year?</p> <p>11 A. It does.</p> <p>12 Q. As of the end of 2018, is it fair to</p> <p>13 say that the notes and other amounts due from</p> <p>14 affiliates now exceeded more than 15 percent of</p> <p>15 Highland's assets?</p> <p>16 A. That is correct.</p> <p>17 Q. Now, let's go to page 26, please.</p> <p>18 And you will see number – note number 8</p> <p>19 relates to related-party transactions. Do you</p> <p>20 see that?</p> <p>21 A. I do.</p> <p>22 Q. So again, do I have this right that</p> <p>23 this section of the notes is intended to</p> <p>24 provide the detail about transactions between</p> <p>25 Highland and related parties?</p>
<p>Page 52</p> <p>1 BURGER</p> <p>2 A. It is.</p> <p>3 Q. And that is required by GAAP, do I</p> <p>4 have that right?</p> <p>5 A. You have got it correct.</p> <p>6 Q. Okay. Let's go to page 28, please.</p> <p>7 Do you see on page 28 and continuing</p> <p>8 on page 29 there is again a section of note 9</p> <p>9 entitled notes and other amounts due from</p> <p>10 affiliates?</p> <p>11 A. I do.</p> <p>12 Q. And this information was provided by</p> <p>13 management, correct?</p> <p>14 A. Correct.</p> <p>15 Q. And this portion of note 8 is</p> <p>16 intended to describe the obligations that were</p> <p>17 owed to the debtor by affiliates; correct?</p> <p>18 A. Correct.</p> <p>19 Q. Does this section of note 8 set</p> <p>20 forth the amounts that were due and owing by</p> <p>21 each affiliate as of the end of fiscal year</p> <p>22 2018?</p> <p>23 A. It does.</p> <p>24 Q. And are those amounts included in</p> <p>25 the line item that we just looked at on the</p>	<p>Page 53</p> <p>1 BURGER</p> <p>2 balance sheet called notes and other amounts</p> <p>3 due from affiliates?</p> <p>4 A. It is.</p> <p>5 Q. And can you confirm for me that</p> <p>6 management is the one who decided – withdrawn.</p> <p>7 Can you confirm for me that</p> <p>8 management is the one who calculated the</p> <p>9 amounts due and owing by each affiliate as of</p> <p>10 December 31st, 2018?</p> <p>11 MR. AIGEN: Objection, form.</p> <p>12 A. That is correct.</p> <p>13 Q. To the best of your knowledge, did</p> <p>14 anybody from Highland ever tell anybody from</p> <p>15 PwC that any of the amounts due and owing as</p> <p>16 set forth in the notes and other amounts due</p> <p>17 from affiliates was wrong or incorrect?</p> <p>18 A. Not to my knowledge.</p> <p>19 Q. And can you confirm for me that in</p> <p>20 connection with the 2018 financial statements</p> <p>21 Highland again stated in general that the fair</p> <p>22 value of the notes and other amounts due from</p> <p>23 affiliates approximates the carrying value of</p> <p>24 the notes receivable?</p> <p>25 A. That's correct.</p>

<p>Page 54</p> <p>1 BURGER</p> <p>2 Q. Is it fair to say that when PwC</p> <p>3 issued its audit opinion on June 3rd, 2019 that</p> <p>4 they had no reason to discount the fair value</p> <p>5 of any of the notes described in this portion</p> <p>6 of note 8?</p> <p>7 MR. AIGEN: Objection, form.</p> <p>8 A. Yeah, that is correct.</p> <p>9 Q. Let's go to page 38, please, note</p> <p>10 15. Do you see note 15 beginning on page 38?</p> <p>11 A. I do.</p> <p>12 Q. And is this the section of the notes</p> <p>13 that are intended to describe material</p> <p>14 subsequent events that would require</p> <p>15 disclosure?</p> <p>16 A. It is.</p> <p>17 Q. And is the information set forth in</p> <p>18 section 15 or note 15 information that was</p> <p>19 provided by Highland?</p> <p>20 A. Correct.</p> <p>21 Q. To the best of PwC's knowledge, as</p> <p>22 of June 3rd, 2019, did note 15 in fact include</p> <p>23 a description of all material subsequent events</p> <p>24 that required disclosure?</p> <p>25 A. That's correct.</p>	<p>Page 55</p> <p>1 BURGER</p> <p>2 Q. Did anyone – withdrawn.</p> <p>3 Do you know whether anyone from</p> <p>4 Highland ever informed anyone at PwC that there</p> <p>5 were material subsequent events that were</p> <p>6 omitted from note 15?</p> <p>7 A. I'm not.</p> <p>8 Q. Let's go to the 2018 workpapers.</p> <p>9 (Exhibit 5 marked.)</p> <p>10 Q. We will mark this as Exhibit 5.</p> <p>11 MR. MORRIS: I am trying to go as</p> <p>12 quickly as I can, Michael, to leave you a</p> <p>13 little time.</p> <p>14 MR. AIGEN: Thanks.</p> <p>15 Q. Do you have that, Mr. Burger?</p> <p>16 A. Yeah, I do.</p> <p>17 MR. AIGEN: This is Exhibit 5, John?</p> <p>18 MR. MORRIS: Yes.</p> <p>19 Q. Is there anything that you need to</p> <p>20 look at, Mr. Burger, to confirm that these are</p> <p>21 PwC's workpapers for the 2018 audit as it</p> <p>22 relates to notes and other amounts due from</p> <p>23 affiliates?</p> <p>24 A. I can confirm.</p> <p>25 Q. Okay. And was this also prepared in</p>
<p>Page 56</p> <p>1 BURGER</p> <p>2 the first instance by Ms. Garcia?</p> <p>3 A. No, this was prepared by Madeline</p> <p>4 Pacocha.</p> <p>5 Q. How do you spell her last name?</p> <p>6 A. P-a-c-o-c-h-a.</p> <p>7 Q. And did she report directly to you?</p> <p>8 A. She did. She was part of the team.</p> <p>9 Q. Okay. And do you know whether the</p> <p>10 same process that was followed in 2018 was</p> <p>11 followed in 2000 – withdrawn.</p> <p>12 Did PwC follow the same process in</p> <p>13 creating this document that it did when it</p> <p>14 created the workpapers in 2017?</p> <p>15 A. We did.</p> <p>16 Q. Can you confirm that this document</p> <p>17 was prepared in the ordinary course of PwC's</p> <p>18 business?</p> <p>19 A. It was.</p> <p>20 Q. Can you confirm that this document</p> <p>21 was prepared in the ordinary course of PwC's</p> <p>22 audit of Highland's 2018 financial statements?</p> <p>23 A. That's correct.</p> <p>24 Q. Okay. I'm going to ask a few more</p> <p>25 detailed questions than we did last time. Can</p>	<p>Page 57</p> <p>1 BURGER</p> <p>2 we go to the section called credit risk</p> <p>3 analysis, the tab.</p> <p>4 I think earlier you testified that</p> <p>5 there was kind of two aspects that PwC looked</p> <p>6 at when analyzing the notes and they were the</p> <p>7 intent and the ability to pay. Do I have that</p> <p>8 right?</p> <p>9 MR. AIGEN: Objection, form.</p> <p>10 A. That's correct.</p> <p>11 Q. Okay. And this particular tab,</p> <p>12 credit risk analysis, related to the ability to</p> <p>13 pay part of that analysis; correct?</p> <p>14 A. That's correct.</p> <p>15 Q. Do you see there is a column called</p> <p>16 recoverability?</p> <p>17 A. I do.</p> <p>18 Q. What is that?</p> <p>19 A. That is a qualitative assessment to</p> <p>20 give us reasonable assurance that these notes</p> <p>21 are, A, not in default or – and B, that the –</p> <p>22 at least materially the maker has enough assets</p> <p>23 that we are aware of to – to be able to repay.</p> <p>24 Q. And did Highland provide the data</p> <p>25 and information related to each maker's ability</p>

<p>Page 58</p> <p>1 BURGER</p> <p>2 to pay?</p> <p>3 A. This is a combination but most of</p> <p>4 this is our own due diligence.</p> <p>5 Q. And – and can you describe for me</p> <p>6 what steps in the due diligence process PwC</p> <p>7 undertook to ascertain whether the makers have</p> <p>8 the ability to pay?</p> <p>9 A. Mostly – mostly relates to evidence</p> <p>10 that there are payments on notes and that none</p> <p>11 of the notes are contractually in default. And</p> <p>12 then also very much specifically to</p> <p>13 Mr. Dondero's ability from known assets that</p> <p>14 can be found on public filings.</p> <p>15 Q. And did PwC analyze public filings</p> <p>16 and conclude that Mr. Dondero had the ability</p> <p>17 to repay the notes that had – that he had</p> <p>18 issued to the debtor?</p> <p>19 A. Through public filings which we</p> <p>20 could obtain, we could at least assess that</p> <p>21 there are assets in those, sort of let's call</p> <p>22 it public filings that would be adequate to</p> <p>23 repay the amounts.</p> <p>24 Q. Is it fair to say that this section</p> <p>25 of the workpapers is an assessment of each</p>	<p>Page 59</p> <p>1 BURGER</p> <p>2 affiliate's creditworthiness?</p> <p>3 A. Not each individual, but on a more</p> <p>4 look-through basis to specifically Mr. Dondero.</p> <p>5 The purpose of this is not to sign-off on an</p> <p>6 absolute creditworthiness of each party, but to</p> <p>7 provide enough evidence to give us reasonable</p> <p>8 assurance that these notes are recoverable.</p> <p>9 Q. And based on the due diligence that</p> <p>10 PwC did and the information provided by</p> <p>11 Highland, did PwC conclude that the makers of</p> <p>12 the notes had the ability to repay the</p> <p>13 obligations set forth therein?</p> <p>14 A. We did.</p> <p>15 Q. Did PwC rely on the analysis set</p> <p>16 forth on this document in deciding to issue the</p> <p>17 opinion in connection – the clean opinion in</p> <p>18 connection with the 2018 audit?</p> <p>19 A. Yeah, this is part of our workpapers</p> <p>20 which forms the collective base of our opinion,</p> <p>21 yes.</p> <p>22 Q. If PwC had any concerns that any</p> <p>23 maker was unable to repay the obligations under</p> <p>24 any of the notes made to Highland, is there a</p> <p>25 process or what would happen under that</p>
<p>Page 60</p> <p>1 BURGER</p> <p>2 circumstance?</p> <p>3 MR. AIGEN: Objection, form.</p> <p>4 A. Do I answer that?</p> <p>5 MR. WANDER: Yes.</p> <p>6 A. If we become aware of any data or</p> <p>7 anything which shows us that a counterparty</p> <p>8 cannot repay the note, the question stems to</p> <p>9 management as to why they consider the note</p> <p>10 fully recoverable. Because the fact that there</p> <p>11 is a note with a legal agreement to it doesn't</p> <p>12 mean – there may be adverse data that show</p> <p>13 that the counterparty is not able to pay and</p> <p>14 that then results in additional work to assess</p> <p>15 whether that loan can be recorded at its full</p> <p>16 value.</p> <p>17 Q. But in connection with the 2018</p> <p>18 audit, management represented that each of the</p> <p>19 notes was fully recoverable. Do I have that</p> <p>20 right?</p> <p>21 MR. AIGEN: Objection, form.</p> <p>22 A. They did.</p> <p>23 Q. Let's go to the results template,</p> <p>24 please.</p> <p>25 Now, do you see that there is</p>	<p>Page 61</p> <p>1 BURGER</p> <p>2 approximately 116 or 117 – withdrawn.</p> <p>3 Do you see that there is</p> <p>4 approximately \$116 difference between the</p> <p>5 amount per client and the balance per testing?</p> <p>6 A. Yes, I do.</p> <p>7 Q. Okay. What – what does –</p> <p>8 withdrawn.</p> <p>9 Is the amount per client the total</p> <p>10 principal and interest due as of the balance</p> <p>11 sheet date for each of the makers listed under</p> <p>12 the account description column?</p> <p>13 A. That is the amount that is obtained</p> <p>14 from the trial balance that is used for the</p> <p>15 financial statements –</p> <p>16 Q. Okay.</p> <p>17 A. – in Column D.</p> <p>18 Q. And did PwC then test those amounts</p> <p>19 for accuracy or reasonableness?</p> <p>20 A. For reasonableness we went back if</p> <p>21 material to the appropriate legal agreements.</p> <p>22 MR. AIGEN: I didn't want to</p> <p>23 interrupt, but I was objecting to form with</p> <p>24 that one.</p> <p>25 Q. And based on the testing that PwC</p>

<p>Page 62</p> <p>1 BURGER</p> <p>2 did, did it reach any conclusions as to the</p> <p>3 reliability of the debtors' of Highland's</p> <p>4 assessment as to the amount owed by each</p> <p>5 client?</p> <p>6 A. Do you mind repeating that question?</p> <p>7 Q. Yeah, that wasn't very good.</p> <p>8 What is the purpose of the testing</p> <p>9 that -- that was undertaken that is reflected</p> <p>10 on this page?</p> <p>11 A. So the purpose is, again, the 173 is</p> <p>12 the amount that goes to the line item in</p> <p>13 question that we are or that part of feeds into</p> <p>14 another tab called detail, which goes back into</p> <p>15 the detail.</p> <p>16 So from there if we have a balance</p> <p>17 as recorded in the financial statements we need</p> <p>18 to obtain the detail behind that, what makes up</p> <p>19 those amounts. And for each one individually</p> <p>20 or collective material, we need to test the, A,</p> <p>21 the existence of the amount and, B, the</p> <p>22 evaluation of the amount.</p> <p>23 Q. Let's go to the next tab, due from</p> <p>24 HCMSI. Do you see that?</p> <p>25 A. I do.</p>	<p>Page 63</p> <p>1 BURGER</p> <p>2 Q. So does this show that an entity</p> <p>3 known as HCMSI had principal and interest due</p> <p>4 on one or more promissory notes totaling</p> <p>5 approximately 13 and a half million dollars?</p> <p>6 A. It is three promissory notes, which</p> <p>7 adds up to approximately 13.9 million dollars.</p> <p>8 Q. Okay. So promissory note one is on</p> <p>9 the left where it says closing date May 31,</p> <p>10 2017. Do I have that right?</p> <p>11 A. Correct.</p> <p>12 Q. And if we scroll down promissory --</p> <p>13 where is the second promissory note?</p> <p>14 A. Just go over to column R and then</p> <p>15 AB, I can read.</p> <p>16 Q. Okay. So then -- so that is the</p> <p>17 second promissory note is the one that was</p> <p>18 issued on June 25th, 2018 in the amount of</p> <p>19 \$200,000, and then the third one is issued on</p> <p>20 March 26th, 2018 in the amount of \$150,000. Do</p> <p>21 I have that right?</p> <p>22 A. That's correct.</p> <p>23 Q. And this shows that under the first</p> <p>24 note, if we could go to the left a bit, that</p> <p>25 HCMSI paid Highland exactly \$1 million on</p>
<p>Page 64</p> <p>1 BURGER</p> <p>2 October 8th, 2018 that was allocated -- a</p> <p>3 portion of which was allocated to principal and</p> <p>4 a portion of which was allocated to interest?</p> <p>5 A. That's correct.</p> <p>6 Q. Okay. Let's go to the next tab,</p> <p>7 Dondero tax loans. Do you know why the loans</p> <p>8 to Mr. Dondero are described as tax loans?</p> <p>9 A. It is -- it is described as tax loan</p> <p>10 to facilitate tax payments based on earnings is</p> <p>11 my understanding.</p> <p>12 Q. Did PwC ever make any inquiry as to</p> <p>13 whether the amounts loaned to Mr. Dondero</p> <p>14 approximated the amount of tax liability that</p> <p>15 he faced?</p> <p>16 MR. AIGEN: Objection, form.</p> <p>17 A. We did not.</p> <p>18 Q. Does PwC have any information as to</p> <p>19 whether or not the loans made to Mr. Dondero</p> <p>20 were related in any way to his actual tax</p> <p>21 obligations?</p> <p>22 MR. AIGEN: Objection, form.</p> <p>23 A. We did not. We didn't consider it</p> <p>24 necessary.</p> <p>25 Q. Did PwC make any inquiry as to the</p>	<p>Page 65</p> <p>1 BURGER</p> <p>2 purpose of the loans to Mr. Dondero?</p> <p>3 MR. AIGEN: Objection, form.</p> <p>4 A. In general.</p> <p>5 Q. In general you made an inquiry?</p> <p>6 A. Yeah, as to the -- the -- as to</p> <p>7 whether these loans are considered reasonable</p> <p>8 and arm's length.</p> <p>9 Q. What information do you recall that</p> <p>10 you have whether the loans were reasonable and</p> <p>11 arm's length?</p> <p>12 A. Related to the notes being at an</p> <p>13 interest rate which is considered a reasonable</p> <p>14 interest rate considering all the parties</p> <p>15 involved. And then more on, you know, again,</p> <p>16 the testing that were done and the existence of</p> <p>17 the notes.</p> <p>18 Q. Did PwC make any inquiry as to the</p> <p>19 purpose of any of the loans to any of the</p> <p>20 affiliates including Mr. Dondero?</p> <p>21 A. We did.</p> <p>22 Q. Okay. With respect to Mr. Dondero,</p> <p>23 do you have any information that you haven't</p> <p>24 already provided as to PwC's understanding of</p> <p>25 the purpose of the loans?</p>

<p style="text-align: right;">Page 66</p> <p>1 BURGER</p> <p>2 MR. AIGEN: Objection.</p> <p>3 A. No.</p> <p>4 Q. No. And who – who told PwC, if you</p> <p>5 know, that the loans were being made to</p> <p>6 Mr. Dondero to pay tax payments based on</p> <p>7 earnings?</p> <p>8 A. Management. I cannot recall a</p> <p>9 specific name.</p> <p>10 Q. Okay. But it is your understanding</p> <p>11 that the loans were made to Mr. Dondero in</p> <p>12 order to enable him to pay the taxes due on his</p> <p>13 earnings. Do I have that right?</p> <p>14 A. That's correct.</p> <p>15 Q. And who decided the amount of the</p> <p>16 loans, to the best of your knowledge?</p> <p>17 MR. AIGEN: Objection, form.</p> <p>18 A. It is an agreement between</p> <p>19 management and Mr. – management.</p> <p>20 Q. Do you have anybody – do you have</p> <p>21 any knowledge as to who on behalf of Highland</p> <p>22 made the agreement with Mr. Dondero about the</p> <p>23 amount of the loans?</p> <p>24 A. I cannot recall the specific name.</p> <p>25 Q. If you look at loan number 1 there,</p>	<p style="text-align: right;">Page 67</p> <p>1 BURGER</p> <p>2 the \$14 million loan that was first made in</p> <p>3 December 2017, do I have this right that</p> <p>4 Mr. Dondero made a payment of over \$750,000</p> <p>5 that was applied to principal and interest on</p> <p>6 December 19th, 2018?</p> <p>7 A. That's correct.</p> <p>8 Q. Okay. And if we scroll down a</p> <p>9 little bit more, keep going, note number 4.</p> <p>10 Did Mr. Dondero make a \$2 million payment to</p> <p>11 Highland on December 18th, 2018, a portion of</p> <p>12 which was used to pay principal and a portion</p> <p>13 of which was used to pay interest on note</p> <p>14 number 4?</p> <p>15 A. That's correct.</p> <p>16 Q. Did anybody ever tell you that in</p> <p>17 January or February 2019 that Mr. Dondero had</p> <p>18 entered into an oral agreement with his sister</p> <p>19 acting on behalf of Highland whereby</p> <p>20 Mr. Dondero and certain of his affiliates would</p> <p>21 be relieved of the obligation to pay amounts</p> <p>22 due under the promissory notes if certain</p> <p>23 conditions subsequent were met?</p> <p>24 MR. AIGEN: Objection, form.</p> <p>25 A. No, they did not.</p>
<p style="text-align: right;">Page 68</p> <p>1 BURGER</p> <p>2 Q. Do you know whether anybody at PwC</p> <p>3 was ever informed by Mr. Dondero – withdrawn.</p> <p>4 Do you know if anybody at PwC was</p> <p>5 ever informed by anybody at Highland that in</p> <p>6 January or February 2019 Mr. Dondero entered</p> <p>7 into an oral agreement with his sister acting</p> <p>8 on behalf of Highland whereby Mr. Dondero and</p> <p>9 certain of his affiliates would be relieved of</p> <p>10 all obligations to pay all amounts otherwise</p> <p>11 due and owing under the promissory notes if</p> <p>12 certain conditions subsequent were met?</p> <p>13 MR. AIGEN: Objection, form.</p> <p>14 A. I do not.</p> <p>15 Q. Okay. Can we go – I apologize, but</p> <p>16 can we go back to tab number – the detail tab</p> <p>17 in the – in the workpapers?</p> <p>18 MR. WANDER: In Exhibit 5 or Exhibit</p> <p>19 3?</p> <p>20 Q. Exhibit 5, thank you for the</p> <p>21 clarification. Okay, so the detail tab and the</p> <p>22 workpapers for 2018 lists all of the notes</p> <p>23 receivable that were made by affiliates of</p> <p>24 Highland; correct?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 69</p> <p>1 BURGER</p> <p>2 Q. Are you aware of any oral or written</p> <p>3 amendment to any of the promissory notes that</p> <p>4 are described on the detail page of Exhibit 5?</p> <p>5 MR. AIGEN: Objection, form.</p> <p>6 MR. MORRIS: What – what is the</p> <p>7 objection? Hold on before you answer, what</p> <p>8 is the objection?</p> <p>9 MR. AIGEN: I think it is vague. I</p> <p>10 don't know which stuff you are talking</p> <p>11 about here. Are you asking for a legal</p> <p>12 conclusion, and there is no foundation.</p> <p>13 Q. Yeah, okay. Certainly not asking</p> <p>14 for a legal conclusion and I will – let me ask</p> <p>15 the question again, sir.</p> <p>16 This page lists the amounts that</p> <p>17 each of the affiliates owes to Highland under</p> <p>18 various promissory notes; correct?</p> <p>19 A. Correct.</p> <p>20 Q. Are you aware of any oral or written</p> <p>21 amendment to any of those promissory notes?</p> <p>22 A. No, up to June 3rd, 2019.</p> <p>23 Q. And do you know whether anyone at</p> <p>24 PwC was aware of any oral or written amendment</p> <p>25 to any of the promissory notes as of June 3rd,</p>

<p>Page 70</p> <p>1 BURGER</p> <p>2 2019?</p> <p>3 MR. AIGEN: Objection, form.</p> <p>4 A. No, I'm not.</p> <p>5 Q. Were you ever informed of any</p> <p>6 amendment, written or oral, to any promissory</p> <p>7 note at any time?</p> <p>8 A. I was not.</p> <p>9 Q. Did anyone ever tell you that any of</p> <p>10 the notes in – referred to in the detail tab</p> <p>11 of Exhibit 5 might be forgiven under certain</p> <p>12 circumstances?</p> <p>13 A. No.</p> <p>14 Q. Do you know whether anybody at PwC</p> <p>15 was ever informed by anybody at Highland that</p> <p>16 any of the notes in the detail tab in Exhibit 5</p> <p>17 might be forgiven?</p> <p>18 MR. AIGEN: Objection, form.</p> <p>19 A. I do not.</p> <p>20 Q. Under your understanding of the GAAP</p> <p>21 rules, did Mr. Dondero and Mr. Waterhouse have</p> <p>22 a continuing obligation to inform PwC of any</p> <p>23 circumstances that would call into question the</p> <p>24 collectability of any of the notes due from</p> <p>25 affiliates?</p>	<p>Page 71</p> <p>1 BURGER</p> <p>2 MR. AIGEN: Objection, form.</p> <p>3 A. Yes, they had the responsibility.</p> <p>4 Q. To the best of your knowledge, did</p> <p>5 Mr. Dondero ever inform anybody at PwC prior to</p> <p>6 June 3rd, 2019 that any of the notes might not</p> <p>7 be collectable?</p> <p>8 MR. AIGEN: Objection, form.</p> <p>9 A. He did not.</p> <p>10 Q. To the best of your knowledge, did</p> <p>11 Mr. Dondero ever inform anybody at PwC prior to</p> <p>12 June 3rd, 2019 that any of the notes might be</p> <p>13 forgiven under certain circumstances?</p> <p>14 MR. AIGEN: Objection, form.</p> <p>15 A. He did not.</p> <p>16 Q. To the best of your knowledge, did</p> <p>17 Mr. Dondero ever inform anyone at PwC prior to</p> <p>18 June 3rd, 2019 that any of the notes were</p> <p>19 amended?</p> <p>20 MR. AIGEN: Objection, form.</p> <p>21 A. He did not.</p> <p>22 Q. To the best of your knowledge, did</p> <p>23 Mr. Dondero ever inform anyone at PwC prior to</p> <p>24 June 3rd, 2019 that the obligations under any</p> <p>25 of the notes would be extinguished based on the</p>
<p>Page 72</p> <p>1 BURGER</p> <p>2 fulfillment of certain conditions subsequent?</p> <p>3 MR. AIGEN: Objection, form.</p> <p>4 A. Again, he did not.</p> <p>5 Q. I'm going to ask the same questions</p> <p>6 now with respect to Mr. Waterhouse.</p> <p>7 To the best of your knowledge, did</p> <p>8 Mr. Waterhouse ever inform anyone at PwC prior</p> <p>9 to June 3rd, 2019 that any of the notes might</p> <p>10 not be collectable?</p> <p>11 MR. AIGEN: Objection, form.</p> <p>12 A. He did not.</p> <p>13 Q. To the best of your knowledge, did</p> <p>14 Mr. Waterhouse ever inform anyone at PwC prior</p> <p>15 to June 3rd, 2019 that any of the notes might</p> <p>16 be forgiven under certain circumstances?</p> <p>17 A. No, he did not.</p> <p>18 Q. To the best of your knowledge, did</p> <p>19 Mr. Waterhouse ever inform anyone at PwC prior</p> <p>20 to June 3rd, 2019 that any of the notes were</p> <p>21 amended?</p> <p>22 A. He did not.</p> <p>23 Q. To the best of your knowledge, did</p> <p>24 Mr. Waterhouse ever inform anybody at PwC prior</p> <p>25 to June 3rd, 2019 that the obligations under</p>	<p>Page 73</p> <p>1 BURGER</p> <p>2 any of the notes would be extinguished upon the</p> <p>3 fulfillment of certain conditions subsequent?</p> <p>4 MR. AIGEN: Objection, form.</p> <p>5 A. He did not.</p> <p>6 Q. Now, just going to finish up the</p> <p>7 last set of questions to make it broader for</p> <p>8 anybody at Highland.</p> <p>9 To the best of your knowledge, did</p> <p>10 anyone from Highland ever inform anyone at PwC</p> <p>11 prior to June 3rd, 2019 that any of the notes</p> <p>12 might not be collectable?</p> <p>13 MR. AIGEN: Objection, form.</p> <p>14 A. Not to my knowledge.</p> <p>15 Q. To the best of your knowledge, did</p> <p>16 anyone from Highland ever inform anyone at PwC</p> <p>17 prior to June 3rd, 2019 that any of the notes</p> <p>18 might be forgiven under certain circumstances?</p> <p>19 A. Not to my knowledge.</p> <p>20 Q. To the best of your knowledge, did</p> <p>21 anyone from Highland ever inform anyone at PwC</p> <p>22 prior to June 3rd, 2019 that any of the notes</p> <p>23 were amended?</p> <p>24 MR. AIGEN: Objection, form.</p> <p>25 A. Not to my knowledge.</p>

<p style="text-align: right;">Page 74</p> <p>1 BURGER</p> <p>2 Q. To the best of your knowledge, did</p> <p>3 anyone from Highland ever inform anyone at PwC</p> <p>4 prior to June 3rd, 2019 that the obligations</p> <p>5 under any of the notes would be extinguished</p> <p>6 upon the fulfillment of certain conditions</p> <p>7 subsequent?</p> <p>8 A. Not to my knowledge.</p> <p>9 Q. If PwC had learned before June 3rd,</p> <p>10 2019 that any of the notes might not be</p> <p>11 collectable, would PwC have required that</p> <p>12 information to be disclosed?</p> <p>13 MR. AIGEN: Objection, form.</p> <p>14 A. Disclosed or potentially based on</p> <p>15 materiality financials adjusted.</p> <p>16 Q. I'm going to ask that question</p> <p>17 again.</p> <p>18 A. Okay.</p> <p>19 Q. If PwC had learned before June 3rd,</p> <p>20 2019 that any of the notes that had an</p> <p>21 outstanding principal amount of at least \$1.7</p> <p>22 million might not be collectable, would PwC</p> <p>23 have required that to be disclosed?</p> <p>24 A. Correct.</p> <p>25 MR. AIGEN: Objection, form.</p>	<p style="text-align: right;">Page 75</p> <p>1 BURGER</p> <p>2 Q. And why is that?</p> <p>3 A. If you have a material – if you</p> <p>4 have material adverse effects of the balance</p> <p>5 sheet which gives a material adjustment to the</p> <p>6 financial statements, depending on the type of</p> <p>7 event you require either disclosure or actual</p> <p>8 adjustment to the balance sheet.</p> <p>9 Q. If PwC had learned before June 3rd,</p> <p>10 2019 that any of the notes that had a</p> <p>11 outstanding principal amount due of at least</p> <p>12 \$1.7 million might be forgiven, would PwC have</p> <p>13 required that to be disclosed?</p> <p>14 A. Yes.</p> <p>15 MR. AIGEN: Objection, form.</p> <p>16 Q. Is that for the same reasons that</p> <p>17 you just articulated with respect to the lack</p> <p>18 of collectability?</p> <p>19 A. Correct.</p> <p>20 Q. Just two more questions. If PwC</p> <p>21 learned before June 3rd, 2019 that any of the</p> <p>22 notes that had an outstanding principal amount</p> <p>23 of \$1.7 million or more, if those notes had</p> <p>24 been amended, would PwC have required that to</p> <p>25 be disclosed?</p>
<p style="text-align: right;">Page 76</p> <p>1 BURGER</p> <p>2 MR. AIGEN: Objection, form.</p> <p>3 A. We would have.</p> <p>4 Q. And finally, if PwC learned before</p> <p>5 June 3rd, 2019 that any of the notes that had a</p> <p>6 then outstanding principal amount due of at</p> <p>7 least \$1.7 million would be extinguished based</p> <p>8 on the fulfillment of certain conditions</p> <p>9 subsequent, would PwC have required that to be</p> <p>10 disclosed?</p> <p>11 MR. AIGEN: Objection, form.</p> <p>12 A. We would have.</p> <p>13 Q. Okay.</p> <p>14 MR. MORRIS: I have no further</p> <p>15 questions. Thank you very much, sir.</p> <p>16 EXAMINATION</p> <p>17 BY MR. AIGEN:</p> <p>18 Q. All right. I guess my first</p> <p>19 question is, how much of a hard stop time is</p> <p>20 11:45? I don't mean that for you that can be</p> <p>21 for counsel.</p> <p>22 A. I can go to noon.</p> <p>23 Q. I will try – I do not think I'm</p> <p>24 going to be able to be done by then. I guess</p> <p>25 at that point we can stop and it is possible</p>	<p style="text-align: right;">Page 77</p> <p>1 BURGER</p> <p>2 John and I can work out stuff on the side. But</p> <p>3 just for the record, I understand this isn't</p> <p>4 your problem I just want to note that we were</p> <p>5 never told there would be this sort of time</p> <p>6 limit today. Again, not your problem and I</p> <p>7 just want to reserve all rights if we can't</p> <p>8 finish today we may have to come back another</p> <p>9 time. Hopefully not, I will do my best to ask</p> <p>10 questions.</p> <p>11 Let's start with some of the</p> <p>12 questions you were asked at the end about –</p> <p>13 Mr. Morris asked you if you had learned certain</p> <p>14 things. And he asked you several questions</p> <p>15 about it, that PwC would have required that</p> <p>16 information to be disclosed. Do you remember</p> <p>17 that?</p> <p>18 A. Okay.</p> <p>19 Q. Yes, you remember that?</p> <p>20 A. Yes, I do.</p> <p>21 Q. When you say or he said required to</p> <p>22 be disclosed, what are you talking about,</p> <p>23 disclosed where and to whom?</p> <p>24 A. Typically that would be disclosed in</p> <p>25 your subsequent events footnotes, but you can</p>

<p>Page 78</p> <p>1 BURGER</p> <p>2 also disclose it in note 9 or 8 in this</p> <p>3 instance, the relevant note.</p> <p>4 Q. And those questions were, for</p> <p>5 instance, one of the questions were do you</p> <p>6 remember being asked if PwC had learned that</p> <p>7 the notes might be forgiven PwC would have</p> <p>8 required that to have been disclosed. Do you</p> <p>9 remember answering that question?</p> <p>10 A. Yeah, I do.</p> <p>11 Q. And I want to focus on this. I know</p> <p>12 these are Mr. Morris' questions, so it may not</p> <p>13 have been your language, but you were asked if</p> <p>14 it might be forgiven.</p> <p>15 What does that mean to you? Are we</p> <p>16 talking about is there a difference for you if</p> <p>17 there was a 1 percent chance that something</p> <p>18 would be forgiven or a 90 percent change of it</p> <p>19 being forgiven?</p> <p>20 A. If we learned about something, let's</p> <p>21 say, we learned might be forgiven, that would</p> <p>22 have resulted in additional audit work. The</p> <p>23 question I understood to be and the answer I</p> <p>24 gave was if something happened where there was</p> <p>25 an event that actually occurred before or on</p>	<p>Page 79</p> <p>1 BURGER</p> <p>2 June 3rd, we would have required disclosure.</p> <p>3 Q. Got it. So is it fair to say that</p> <p>4 in response to all of Mr. Morris' questions</p> <p>5 about what would have been required to be</p> <p>6 disclosed, in your mind he was referring to</p> <p>7 those events or items having actually occurred</p> <p>8 and the notes being actually forgiven at that</p> <p>9 point in time; is that correct?</p> <p>10 MR. MORRIS: Objection to the form</p> <p>11 of the question.</p> <p>12 Q. I didn't hear your answer.</p> <p>13 A. Correct.</p> <p>14 Q. So you haven't provided any</p> <p>15 testimony today about what PwC might have</p> <p>16 required to be disclosed or disclosed if</p> <p>17 certain events took place in the future; is</p> <p>18 that fair to say?</p> <p>19 MR. MORRIS: Objection to the form</p> <p>20 of the question.</p> <p>21 A. That is fair to say, but any events</p> <p>22 that we learn of may have – will be assessed</p> <p>23 for what the impact on the valuation of the</p> <p>24 loan is.</p> <p>25 Q. And is it fair to say, then, that</p>
<p>Page 80</p> <p>1 BURGER</p> <p>2 PwC would have to analyze and assess a</p> <p>3 condition to determine whether it is something</p> <p>4 this needs to be disclosed?</p> <p>5 A. Yeah, we will have to analyze it.</p> <p>6 Q. And how would PwC go about analyzing</p> <p>7 a potential event that might forgive or</p> <p>8 discharge the notes?</p> <p>9 A. It depends on what the event is. It</p> <p>10 comes down to a function of materiality and</p> <p>11 probability and understanding the potential</p> <p>12 event through discussions with management.</p> <p>13 Again, it depends on the event.</p> <p>14 Q. Okay. And without knowing the</p> <p>15 specific event, would you agree that you can't</p> <p>16 testify today on whether that would need to be</p> <p>17 disclosed in the financials?</p> <p>18 MR. MORRIS: Objection to the form</p> <p>19 of the question.</p> <p>20 A. Again, the purpose of subsequent</p> <p>21 event disclosure is to disclose to the reader</p> <p>22 of the financial statements any events that</p> <p>23 actually occurred. And if we are aware of</p> <p>24 something that – that did not occur but that</p> <p>25 may have a material adverse effect on the</p>	<p>Page 81</p> <p>1 BURGER</p> <p>2 financial statements, that is something that we</p> <p>3 would consider for disclosure.</p> <p>4 Q. And when you say you'd consider it,</p> <p>5 is it fair that you would analyze the</p> <p>6 probability that the event would occur?</p> <p>7 MR. MORRIS: Objection to the form</p> <p>8 of the question.</p> <p>9 A. Correct.</p> <p>10 Q. And would you also –</p> <p>11 A. Correct.</p> <p>12 Q. Would you also look at the potential</p> <p>13 materiality of that event?</p> <p>14 A. Yes.</p> <p>15 Q. And with respect to the promissory</p> <p>16 notes at issue in this litigation, is it fair</p> <p>17 to say that no one at PwC made any sort of</p> <p>18 analysis about whether those notes would be</p> <p>19 potentially discharged due to events that might</p> <p>20 occur in the future?</p> <p>21 MR. MORRIS: Objection to the form</p> <p>22 of the question.</p> <p>23 A. That is not part of our professional</p> <p>24 work responsibility to consider potential</p> <p>25 events that might occur.</p>

<p>Page 82</p> <p>1 BURGER</p> <p>2 Q. And the audits that we were talking</p> <p>3 about were in 2017 and 2018; is that correct?</p> <p>4 A. Yeah, conducted in '18 for '17 and</p> <p>5 conducted in '19 for '18.</p> <p>6 Q. Okay. And I just want to ask some</p> <p>7 general questions about the audits that were</p> <p>8 done. And to speed things up, I'm going to ask</p> <p>9 you the questions combining those two years.</p> <p>10 If you need to break it down per year we can do</p> <p>11 that, too, but these are pretty general</p> <p>12 questions.</p> <p>13 Can you tell me approximately how</p> <p>14 many people worked on the audits of Highland at</p> <p>15 PwC in 2017 and 2018?</p> <p>16 A. Again, earlier I said six or seven.</p> <p>17 Q. And out of those six or seven, how</p> <p>18 many people had communications with anyone at</p> <p>19 Highland?</p> <p>20 A. I would argue all of them, all of</p> <p>21 us.</p> <p>22 Q. Okay. And who at Highland did these</p> <p>23 six or seven people have communications with</p> <p>24 with respect to the work on the audits?</p> <p>25 A. It depends. It depends on the</p>	<p>Page 83</p> <p>1 BURGER</p> <p>2 nature of the question. So again, Kristin</p> <p>3 Hendrix, and actually earlier there is another</p> <p>4 name Drew Wilson would have been a person that</p> <p>5 we dealt with on a day-to-day basis. Above</p> <p>6 them would be Dave Klos and above them would be</p> <p>7 Frank Waterhouse, the CFO.</p> <p>8 So again, if it is a routine matter,</p> <p>9 our more junior people probably dealt with</p> <p>10 Kristin and Drew. And if it is not a routine</p> <p>11 matter and on periodic status meetings, my</p> <p>12 communication would have probably been more</p> <p>13 with Dave Klos and my managers.</p> <p>14 Q. I apologize. Other than those four,</p> <p>15 Ms. Hendrix, Mr. Wilson, Mr. Klos and</p> <p>16 Mr. Waterhouse, is there anyone else at</p> <p>17 Highland that PwC communicated with as part of</p> <p>18 the audit that you are aware of?</p> <p>19 A. Not that I'm aware of. I mean,</p> <p>20 there is a chance that they might have had</p> <p>21 somebody else involved, but not that I can</p> <p>22 recall.</p> <p>23 Q. Have you ever had any conversations</p> <p>24 with Mr. Dondero?</p> <p>25 A. Not specifically relating to any –</p>
<p>Page 84</p> <p>1 BURGER</p> <p>2 related to the audit directly.</p> <p>3 Q. Do you know whether any of the other</p> <p>4 people at PwC that worked on the audit had any</p> <p>5 conversations with Mr. Dondero?</p> <p>6 A. Not that I'm aware of.</p> <p>7 Q. At the end of Mr. Morris' questions</p> <p>8 if you remember you were asked several</p> <p>9 questions about whether you or anyone at PwC</p> <p>10 had different conversations with anyone at</p> <p>11 Highland about the notes and them being</p> <p>12 potentially forgivable or discharged or</p> <p>13 amended. Do you remember testifying to that?</p> <p>14 A. Yeah, I do.</p> <p>15 Q. You were asked about conversations</p> <p>16 you had and you said you had no such</p> <p>17 conversations; is that correct?</p> <p>18 A. Correct.</p> <p>19 Q. You also testified that you are not</p> <p>20 aware of any conversations of anyone else that</p> <p>21 PwC had with anyone at Highland about this</p> <p>22 subject; is that correct?</p> <p>23 A. That's correct.</p> <p>24 Q. Did you – I know you said you're</p> <p>25 not aware and I guess my question is how do you</p>	<p>Page 85</p> <p>1 BURGER</p> <p>2 know that? Did you have any conversations with</p> <p>3 anyone else at PwC about whether they had any</p> <p>4 such conversations with anyone at Highland</p> <p>5 about potential dischargeability of the notes?</p> <p>6 A. I would have had discussions with my</p> <p>7 manager directly through a review of the</p> <p>8 engagement as we go through all of this. And</p> <p>9 in this instance depending on the person</p> <p>10 involved whether it was Hilda or Madeline, we</p> <p>11 analyze, review as we try to get towards</p> <p>12 sign-off.</p> <p>13 And on this line item, we would have</p> <p>14 gone through the work done on this note, you</p> <p>15 know, and the discussion of whether there is</p> <p>16 any adverse event that anybody is aware of.</p> <p>17 Q. These are all the conversations you</p> <p>18 are aware of during the audit not in the last</p> <p>19 couple of years; is that correct?</p> <p>20 A. Yeah, during the audit.</p> <p>21 MR. MORRIS: Objection to the form</p> <p>22 of the question.</p> <p>23 Q. Are you aware of any specific</p> <p>24 discussions that you had with anyone else at</p> <p>25 PwC about whether they had any communications</p>

<p>Page 86</p> <p>1 BURGER</p> <p>2 with anyone at Highland about whether the notes</p> <p>3 were potentially dischargeable or amended?</p> <p>4 MR. MORRIS: Objection.</p> <p>5 A. No, I'm not aware.</p> <p>6 Q. As part of the audit process, is one</p> <p>7 of the things that PwC looks at who would be</p> <p>8 reviewing or relying on the financial</p> <p>9 statements that you are auditing?</p> <p>10 A. Yes, we consider that.</p> <p>11 Q. And why is that considered?</p> <p>12 A. It is important – well, A, the –</p> <p>13 the format of our report and obviously just</p> <p>14 governed by who relies on it. So in other</p> <p>15 words, if you have a public client with the</p> <p>16 PCAOB standards where everybody in the public</p> <p>17 relied on there are additional procedures and</p> <p>18 additional scope than we have to perform. In a</p> <p>19 certain sense you can deal with two sets of</p> <p>20 rules. And the other part of that is</p> <p>21 considered in who we address our opinion to.</p> <p>22 Q. And in the case of the Highland</p> <p>23 audits, did PwC make an effort to determine who</p> <p>24 would be reviewing and relying on the audits,</p> <p>25 audited financial statements?</p>	<p>Page 87</p> <p>1 BURGER</p> <p>2 A. Yes. As this is a partnership, it</p> <p>3 is generally available to the general partner</p> <p>4 and the partners. And there wasn't any</p> <p>5 specific need that we were aware of with</p> <p>6 third-party lenders or banks or anything that</p> <p>7 we are relying on financials.</p> <p>8 Q. Is who is going to end up reviewing</p> <p>9 and relying on a financial statement relevant</p> <p>10 to what PwC considers to be material and thus</p> <p>11 need to be disclosed?</p> <p>12 MR. MORRIS: Objection to the form</p> <p>13 of the question, asked and answered.</p> <p>14 A. No, sorry.</p> <p>15 Q. Then what is the relevance – sorry.</p> <p>16 If it is – if who is going to</p> <p>17 review a financial statement is not relevant to</p> <p>18 what is going to be disclosed, why is it</p> <p>19 relevant to the work that PwC is doing?</p> <p>20 A. We perform audits either in terms of</p> <p>21 GAAS as promulgated by AICPA or PCAOB, and</p> <p>22 there are differences in those standards.</p> <p>23 And a correction to your previous</p> <p>24 question, on materiality the basis for forming</p> <p>25 a point of view on what is material is not</p>
<p>Page 88</p> <p>1 BURGER</p> <p>2 different, but there are certain nuances in our</p> <p>3 obligation of neutrality as to whether I'm in a</p> <p>4 PCAOB engagement or a AICPA engagement.</p> <p>5 Q. What do you mean by that?</p> <p>6 A. So when we decide – you get to an</p> <p>7 overall materiality. So if you for example,</p> <p>8 are in a fund engagement you can use different</p> <p>9 metrics as to whether you are in, let's say, a</p> <p>10 hedge fund or a mutual fund, which is driven by</p> <p>11 the users of the financials.</p> <p>12 MR. WANDER: It is a difference</p> <p>13 between public and private, Michael.</p> <p>14 Q. And this would be a private</p> <p>15 transaction we're calling it; is that correct?</p> <p>16 A. Yes, governed – sorry, not</p> <p>17 governed, performed. Performed under the</p> <p>18 standards of the AICPA and not the PCAOB.</p> <p>19 Q. And would those standards make a</p> <p>20 difference on what is considered material as</p> <p>21 part of PwC's work?</p> <p>22 A. Depending on the industry, it may.</p> <p>23 Q. And would those differences</p> <p>24 potentially make a difference on what needed to</p> <p>25 be disclosed in the financial statements?</p>	<p>Page 89</p> <p>1 BURGER</p> <p>2 A. Yeah. The standards from a PCAOB</p> <p>3 the asset and disclosure requirements under the</p> <p>4 PCAOB rules, which would not be there under</p> <p>5 AICPA.</p> <p>6 Q. Changing topics a little bit here.</p> <p>7 We talked about related-party transactions a</p> <p>8 little earlier. Do you remember?</p> <p>9 A. Sure, I do.</p> <p>10 Q. Not we, you and Mr. Morris. Can you</p> <p>11 just generally at a high level explain what a</p> <p>12 related-party transaction is?</p> <p>13 A. So related-party I cannot – I</p> <p>14 cannot quote the verbatim GAAP or GAAS</p> <p>15 definition right now, but in effect the</p> <p>16 related-party is any party that up or down the</p> <p>17 stream can have material influence or control</p> <p>18 of the entity. So it would be key management,</p> <p>19 anybody in an ownership structure upstream</p> <p>20 which has significant interest or control as</p> <p>21 well as even – it can be in certain</p> <p>22 circumstances, certain service providers.</p> <p>23 Q. Let's concentrate on notes for a</p> <p>24 second. There can be –</p> <p>25 A. Okay.</p>

<p>Page 90</p> <p>1 BURGER</p> <p>2 Q. – related-party notes and then what</p> <p>3 would you call them non-related-party notes if</p> <p>4 they're not related-party notes? Is there a</p> <p>5 term for that?</p> <p>6 MR. MORRIS: Objection to form of</p> <p>7 the question.</p> <p>8 A. Third party, unaffiliated.</p> <p>9 Q. When analyzing the collectability of</p> <p>10 notes, is there any differences in what PwC was</p> <p>11 doing looking at affiliated – non-affiliated</p> <p>12 transaction notes versus related-party notes?</p> <p>13 MR. MORRIS: Objection to the form</p> <p>14 of the question.</p> <p>15 A. Not really.</p> <p>16 Q. You say "not really," that can –</p> <p>17 A. Yeah, not – no, there isn't,</p> <p>18 because at the end of the day whether a note is</p> <p>19 collectable or not is something that you have</p> <p>20 to get evidence of, and the existence of the</p> <p>21 note is something you have to get evidence of.</p> <p>22 Q. I think I can finish up with a</p> <p>23 couple more questions here. I just want to</p> <p>24 sort of go back to what we talked about in the</p> <p>25 beginning. PwC did not do any sort of analysis</p>	<p>Page 91</p> <p>1 BURGER</p> <p>2 as to whether the notes in question would be</p> <p>3 potentially forgiven or discharged; is that</p> <p>4 correct?</p> <p>5 MR. MORRIS: Objection to the form</p> <p>6 of the question.</p> <p>7 MR. AIGEN: What is your basis for</p> <p>8 the objection?</p> <p>9 MR. MORRIS: It is not their</p> <p>10 responsibility to do that. There is no</p> <p>11 foundation.</p> <p>12 Q. That is fine, you can answer the</p> <p>13 question.</p> <p>14 A. No, we did not as we did not have</p> <p>15 to.</p> <p>16 Q. If PwC had learned that there was</p> <p>17 some condition down the road that could</p> <p>18 potentially discharge or forgive the notes,</p> <p>19 would PwC have had to do some sort of analysis</p> <p>20 to determine if that condition would need to be</p> <p>21 disclosed?</p> <p>22 A. Yes, if you become aware of any</p> <p>23 adverse event which may impact the valuation of</p> <p>24 any asset you have to consider that.</p> <p>25 Q. And in order to consider that, you</p>
<p>Page 92</p> <p>1 BURGER</p> <p>2 would look at the probability that that event</p> <p>3 would occur; is that correct?</p> <p>4 A. Correct, probability and potential</p> <p>5 impact.</p> <p>6 Q. And materiality?</p> <p>7 A. Materiality.</p> <p>8 Q. And that is nothing that you or</p> <p>9 anyone at PwC did with respect to any potential</p> <p>10 conditions that might forgive these notes; is</p> <p>11 that correct?</p> <p>12 A. Yeah, we did not. Yeah, we did not.</p> <p>13 MR. AIGEN: That is all the</p> <p>14 questions I have.</p> <p>15 FURTHER EXAMINATION.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. I just have a few more, sir, few</p> <p>18 follow-ups.</p> <p>19 PwC made no assessment as to whether</p> <p>20 or not any of the notes might not be forgiven</p> <p>21 because they were never given any information</p> <p>22 that indicated that that was even possible;</p> <p>23 correct?</p> <p>24 MR. AIGEN: Objection, form.</p> <p>25 A. That's correct.</p>	<p>Page 93</p> <p>1 BURGER</p> <p>2 Q. PwC was never given any information</p> <p>3 about the possibility that any of the</p> <p>4 affiliated promissory notes might be forgiven;</p> <p>5 correct?</p> <p>6 A. Correct.</p> <p>7 Q. PwC was never informed that</p> <p>8 Mr. Dondero had entered into an agreement that</p> <p>9 could impact the collectability of any of the</p> <p>10 promissory notes; correct?</p> <p>11 MR. AIGEN: Objection, form.</p> <p>12 A. Correct.</p> <p>13 MR. MORRIS: I have no further</p> <p>14 questions.</p> <p>15 MR. AIGEN: I don't have anything.</p> <p>16 MR. MORRIS: Mr. Burger, I greatly</p> <p>17 appreciate your time and your patience.</p> <p>18 Thank you very much, John, same to</p> <p>19 you. Thank you for the accommodations and</p> <p>20 I hope –</p> <p>21 MR. WANDER: Certainly, thank you.</p> <p>22 (Deposition adjourned at 11:41 a.m.)</p> <p>23</p> <p>24</p> <p>25</p>

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1 BURGER
 2 _____
 3 PEET BURGER
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 5 Subscribed and sworn to before me
 6 this day of 2021.
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1 ERRATA SHEET
 2 Case Name:
 3 Deposition Date:
 4 Deponent:
 5 Pg. No. Now Reads Should Read Reason
 6 _____
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 20
 21 _____
 21 Signature of Deponent
 22 SUBSCRIBED AND SWORN BEFORE ME
 23 THIS ____ DAY OF _____, 2021.
 24 _____
 25 (Notary Public) MY COMMISSION EXPIRES:_____

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1 BURGER
 2 C E R T I F I C A T E
 3
 4 I, SUSAN S. KLINGER, a certified
 5 shorthand reporter within and for the State
 6 of Texas, do hereby certify:
 7 That PEET BURGER, the witness whose
 8 deposition is hereinbefore set forth, was
 9 duly sworn by me and that such deposition
 10 is a true record of the testimony given by
 11 such witness.
 12 I further certify that I am not
 13 related to any of the parties to this
 14 action by blood or marriage; and that I am
 15 in no way interested in the outcome of this
 16 matter.
 17 IN WITNESS WHEREOF, I have hereunto
 18 set my hand this 30th of July, 2021.
 19
 20 _____
 21 Susan S. Klinger, RMR-CRR, CSR
 22 Texas CSR# 6531
 23
 24
 25

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EXHIBIT 99

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: :
: Chapter 11
: Case No.
HIGHLAND CAPITAL MANAGEMENT, : 19-34054-sgj11
L.P. :
Debtor. :

:
HIGHLAND CAPITAL MANAGEMENT, :
L.P. :
:
Plaintiff, :
:
vs. : Adversary
: Proceeding No.
NEXPOINT ADVISORS, L.P., : 21-03005-sgj
JAMES DONDERO, NANCY DONDERO, :
AND THE DUGABOY INVESTMENT :
TRUST, :
:
Defendants. :

REMOTE VIDEO DEPOSITION OF JAMES DONDERO

VOLUME III

Thursday, November 4, 2021

JOB NO. 202288

Page 2	Page 3
<p>1</p> <p>2</p> <p>3</p> <p>4 November 4, 2021</p> <p>5 1:17 p.m. CDT</p> <p>6</p> <p>7</p> <p>8 Remote video deposition of JAMES</p> <p>9 DONDERO taken in the above-entitled matter</p> <p>10 before Suzanne J. Stotz, a Certified Shorthand</p> <p>11 Reporter, Certified Realtime Reporter,</p> <p>12 Registered Professional Reporter, and Notary</p> <p>13 Public of the State of Texas, on Thursday,</p> <p>14 November 4, 2021, commencing at 1:17 p.m. CDT.</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 A P P E A R A N C E S:</p> <p>2</p> <p>3 Attorneys for Highland Capital Management L.P.:</p> <p>4 (Via videoconference)</p> <p>5 PACHULSKI STANG ZIEHL & JONES</p> <p>6 780 Third Avenue</p> <p>7 New York, New York 10017</p> <p>8 BY: JOHN MORRIS, ESQ.</p> <p>9 HAYLEY WINOGRAD, ESQ.</p> <p>10</p> <p>11 Attorneys for NexPoint Advisors, L.P.:</p> <p>12 (Via videoconference)</p> <p>13 MUNSCH HARDT KOPF & HARR</p> <p>14 500 North Akard Street</p> <p>15 Dallas, Texas 75201</p> <p>16 BY: THOMAS BERGHMAN, ESQ.</p> <p>17</p> <p>18 Attorneys for James Dondero, Nancy Dondero,</p> <p>19 HCRE HCMS:</p> <p>20 (Via videoconference)</p> <p>21 STINSON</p> <p>22 3102 Oak Lawn Avenue</p> <p>23 Dallas, Texas 75219</p> <p>24 BY: DEBORAH DEITSCH-PEREZ, ESQ</p> <p>25 BY: MICHAEL AIGEN, ESQ.</p>
Page 4	Page 5
<p>1 A P P E A R A N C E S (Continued):</p> <p>2</p> <p>3 Attorneys for Nancy Dondero:</p> <p>4 (Via videoconference)</p> <p>5 GREENBERG TRAURIG</p> <p>6 220 Ross Avenue</p> <p>7 Dallas, Texas 75201</p> <p>8</p> <p>9 BY: DANIEL ELMS, ESQ.</p> <p>10</p> <p>11 Attorneys for The Dugaboy Investment Trust:</p> <p>12 (Via videoconference)</p> <p>13 HELLER, DRAPER, HAYDEN, PATRICK & HORN</p> <p>14 650 Poydras Street</p> <p>15 New Orleans, Louisiana 70130</p> <p>16</p> <p>17 BY: DOUGLAS DRAPER, ESQ.</p> <p>18 MICHAEL LANDIS, ESQ.</p> <p>19</p> <p>20 Attorneys for The Litigation Trust:</p> <p>21 (Via videoconference)</p> <p>22 QUINN EMANUEL URQUHART & SULLIVAN</p> <p>23 51 Madison Avenue</p> <p>24 New York, New York 10010</p> <p>25</p> <p>BY: ROBERT LOIGMAN, ESQ.</p> <p>DEBORAH NEWMAN, ESQ.</p>	<p>1 A P P E A R A N C E S (Continued):</p> <p>2</p> <p>3 A L S O P R E S E N T:</p> <p>4 (Via Videoconference)</p> <p>5 JACOB ARVOLD, Videographer</p> <p>6</p> <p>7 (Via Videoconference)</p> <p>8 LA ASIA CANTY, Legal Assistant</p> <p>9 c/o Pachulski Stang Ziehl & Jones</p> <p>10</p> <p>11 (Via Videoconference)</p> <p>12 AARON LAWRENCE, Law Clerk</p> <p>13 c/o Quinn Emanuel Urquhart & Sullivan</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<div>Page 8</div> <div>1 JAMES DONDERO</div> <div>2 THE VIDEOGRAPHER: Good afternoon.</div> <div>3 My name is Jacob Arvold. I'm a certified</div> <div>4 legal videographer in association with</div> <div>5 TSG Reporting, Inc.</div> <div>6 Due to the severity of COVID-19 and</div> <div>7 following the practice of social</div> <div>8 distancing, I will not be in the same room</div> <div>9 with the witness; instead, I will record</div> <div>10 this video deposition remotely.</div> <div>11 The reporter, Suzanne Stotz, also</div> <div>12 will not be in the same room and will swear</div> <div>13 the witness remotely.</div> <div>14 Do all parties stipulate to the</div> <div>15 validity of video recording and remote</div> <div>16 swearing and that it will be admissible in</div> <div>17 the courtroom as if it had been taken</div> <div>18 following Rule 30 of the Federal Rules of</div> <div>19 Civil Procedures and the state's rules</div> <div>20 where this case is pending?</div> <div>21 MR. MORRIS: Yes.</div> <div>22 If anybody objects to that, please</div> <div>23 speak up.</div> <div>24 Nobody has spoken up. So everybody</div> <div>25 is deemed to have accepted that.</div>	<div>Page 9</div> <div>1 JAMES DONDERO</div> <div>2 THE VIDEOGRAPHER: Thank you.</div> <div>3 This is the start of Media Number 1,</div> <div>4 Volume II [sic] of the video-recorded</div> <div>5 deposition of James Dondero in the matter</div> <div>6 of In Re: Highland Capital Management,</div> <div>7 L.P., in the United States Bankruptcy Court</div> <div>8 for the Northern District of Texas.</div> <div>9 This deposition is being held</div> <div>10 remotely on November 4, 2021, at</div> <div>11 approximately 1:17 p.m.</div> <div>12 Counsel, please introduce</div> <div>13 yourselves.</div> <div>14 MR. MORRIS: Everybody is – is on</div> <div>15 here. I don't – we can't take the time to</div> <div>16 do that. I'm familiar with everybody on</div> <div>17 here. Everybody's appeared in this action</div> <div>18 before, and I'd like to proceed.</div> <div>19 THE VIDEOGRAPHER: All right. The</div> <div>20 appearances will be on the stenographic</div> <div>21 record.</div> <div>22 Will the court reporter please</div> <div>23 reswear the witness.</div> <div>24 THE COURT REPORTER: Could you raise</div> <div>25 your hand.</div>

<p>Page 10</p> <p>1 JAMES DONDERO</p> <p>2 THE WITNESS: (Complies with</p> <p>3 request.)</p> <p>4 JAMES DONDERO,</p> <p>5 having first been duly sworn, was examined and</p> <p>6 testified as follows:</p> <p>7 MS. DEITSCH-PEREZ: I only have one</p> <p>8 questions. Who's Robert Loigman?</p> <p>9 MR. LOIGMAN: I already stated for</p> <p>10 the record. I'm with Quinn Emanuel. I'm</p> <p>11 Debbie Newman's partner.</p> <p>12 MS. DEITSCH-PEREZ: Okay. Thank</p> <p>13 you.</p> <p>14 MR. MORRIS: Can we please put up on</p> <p>15 the screen the document that's been marked</p> <p>16 Exhibit 31.</p> <p>17 MS. CANTY: (Complies with request.)</p> <p>18 EXAMINATION</p> <p>19 BY MR. MORRIS:</p> <p>20 Q. Mr. Dondero, do you understand that</p> <p>21 this is a continuation of your deposition from</p> <p>22 Friday?</p> <p>23 A. Yes.</p> <p>24 Q. Have you spoken with anybody about</p> <p>25 your testimony since we concluded the</p>	<p>Page 11</p> <p>1 JAMES DONDERO</p> <p>2 deposition on Friday?</p> <p>3 A. No.</p> <p>4 Q. Nobody in the world?</p> <p>5 A. Just my attorney.</p> <p>6 Q. And did you speak with your attorney</p> <p>7 about the substance of the deposition on</p> <p>8 Friday? Just –</p> <p>9 MS. DEITSCH-PEREZ: I'm going to</p> <p>10 direct – I'm going to direct him not to</p> <p>11 answer.</p> <p>12 BY MR. MORRIS:</p> <p>13 Q. Okay. I'm just asking you a</p> <p>14 yes-or-no question. I'm not asking for the</p> <p>15 substance of any communications.</p> <p>16 MS. DEITSCH-PEREZ: Well, you're –</p> <p>17 one, I'd have to talk to him to see what he</p> <p>18 thinks "substance" means.</p> <p>19 And to the extent that's</p> <p>20 substantive, you're actually getting at the</p> <p>21 content potentially of a discussion. So</p> <p>22 I'm going to direct him not to answer.</p> <p>23 BY MR. MORRIS:</p> <p>24 Q. Are you going to follow your</p> <p>25 counsel's advice?</p>
<p>Page 12</p> <p>1 JAMES DONDERO</p> <p>2 A. Yes.</p> <p>3 Q. How much time did you spend speaking</p> <p>4 with your attorney since the conclusion of the</p> <p>5 last deposition?</p> <p>6 A. 30 minutes, 40 minutes.</p> <p>7 Q. Are you aware that Alan Johnson</p> <p>8 testified in this case the other day?</p> <p>9 A. I don't know who Alan Johnson is.</p> <p>10 Uh, no.</p> <p>11 Q. Okay. Is it fair to say that you</p> <p>12 have no knowledge of Mr. Johnson's testimony?</p> <p>13 A. I have no knowledge of Mr. Johnson's</p> <p>14 testimony.</p> <p>15 Q. Are you aware that an expert was</p> <p>16 examined by me earlier in the week in</p> <p>17 connection with this case?</p> <p>18 A. I'm aware there's an expert. I'm</p> <p>19 not – I'm not aware that you've examined,</p> <p>20 deposed, or whatever you did with him.</p> <p>21 Q. Okay. When did you speak with your</p> <p>22 counsel for 30 minutes about – following last</p> <p>23 Friday's examination?</p> <p>24 A. About 40 minutes ago.</p> <p>25 Q. Okay.</p>	<p>Page 13</p> <p>1 JAMES DONDERO</p> <p>2 MR. MORRIS: Can we go to</p> <p>3 paragraph 82 of this document –</p> <p>4 Q. – Mr. Dondero, do you see that this</p> <p>5 is your answer to the Plaintiff's Amended</p> <p>6 Complaint.</p> <p>7 A. Yes.</p> <p>8 Q. And we looked at this the other day;</p> <p>9 do you remember that?</p> <p>10 A. Yes.</p> <p>11 MR. MORRIS: Can we can go to page–</p> <p>12 paragraph 82, please.</p> <p>13 MS. CANTY: (Complies with request.)</p> <p>14 BY MR. MORRIS:</p> <p>15 Q. And I just want to table set to make</p> <p>16 sure we're on the same page.</p> <p>17 Paragraph 82 describes the</p> <p>18 agreements that you entered into with Dugaboy</p> <p>19 consuming the forgiveness of certain Promissory</p> <p>20 Notes subject to conditions subsequent.</p> <p>21 Is that a fair overarching overview</p> <p>22 of the nature of the agreements?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And for the rest of the</p> <p>25 deposition today, when I use the phrase</p>

<p>Page 14</p> <p>1 JAMES DONDERO</p> <p>2 "agreements," I'm going to mean the agreements</p> <p>3 that are referred to in paragraph 82; is that</p> <p>4 fair?</p> <p>5 A. Yes, generally. If I have any</p> <p>6 questions, I'll – I'll ask.</p> <p>7 Q. Thank you very much.</p> <p>8 The agreements covered each of the</p> <p>9 notes that are the subject of the lawsuits that</p> <p>10 Highland commenced against you, HCRE Services,</p> <p>11 and NexPoint; is that right?</p> <p>12 A. The – yes.</p> <p>13 Q. What are you looking at?</p> <p>14 A. Just this note sheet that covers all</p> <p>15 the notes.</p> <p>16 Q. Oh.</p> <p>17 MR. MORRIS: Deborah, I would demand</p> <p>18 that that sheet be produced immediately.</p> <p>19 MS. DEITSCH-PEREZ: Okay.</p> <p>20 MR. MORRIS: Okay. And I would ask</p> <p>21 him to put it away.</p> <p>22 MS. DEITSCH-PEREZ: No. He's a</p> <p>23 30(b)(6) witness. He's entitled to have a</p> <p>24 list of the notes. He sure he is.</p> <p>25 MR. MORRIS: I'm telling you now –</p>	<p>Page 15</p> <p>1 JAMES DONDERO</p> <p>2 MS. DEITSCH-PEREZ: I'm sorry to say</p> <p>3 to you.</p> <p>4 MR. MORRIS: I object. That is – I</p> <p>5 have never in my life seen a witness –</p> <p>6 MS. DEITSCH-PEREZ: I have had</p> <p>7 30(b)(6) witnesses with whole notebooks of</p> <p>8 information.</p> <p>9 MR. MORRIS: Okay. So let's just</p> <p>10 make sure the record is clear.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Please describe for me what's on</p> <p>13 that page.</p> <p>14 A. It's a listing of the Notes payable</p> <p>15 to Highland, what their original term and</p> <p>16 amount was, what the term is, and what the loan</p> <p>17 date was.</p> <p>18 Q. Okay. I'm going to ask the –</p> <p>19 MS. DEITSCH-PEREZ: No. I'm going</p> <p>20 to take a picture, and I'm going to send it</p> <p>21 to you, okay?</p> <p>22 MR. MORRIS: Okay. And what we're</p> <p>23 going to do right now is ask him to put it</p> <p>24 away, and I'm going to ask him questions</p> <p>25 solely in his capacity as an individual,</p>
<p>Page 16</p> <p>1 JAMES DONDERO</p> <p>2 okay?</p> <p>3 Please put it away.</p> <p>4 THE WITNESS: Isn't that what this</p> <p>5 deposition is, right? This deposition –</p> <p>6 MS. DEITSCH-PEREZ: Well, this</p> <p>7 deposition is both.</p> <p>8 We're going to take a break for a</p> <p>9 second. Let me think about that, but</p> <p>10 I'll –</p> <p>11 MR. MORRIS: I object. I really</p> <p>12 object. I really object. I'm glad that</p> <p>13 this is all on the record. I object.</p> <p>14 My request is that he put it away</p> <p>15 and answer questions in his capacity as an</p> <p>16 individual.</p> <p>17 I don't know why we need to take a</p> <p>18 break.</p> <p>19 MS. DEITSCH-PEREZ: Well, because</p> <p>20 I'm going to go take a picture of it and</p> <p>21 send it to you.</p> <p>22 MR. MORRIS: I don't want you to do</p> <p>23 that, though.</p> <p>24 MS. DEITSCH-PEREZ: Why don't you</p> <p>25 want – okay.</p>	<p>Page 17</p> <p>1 JAMES DONDERO</p> <p>2 MR. MORRIS: We can do that – we</p> <p>3 can do that when I ask him questions as a</p> <p>4 30(b)(6) witness.</p> <p>5 By the way, it's still</p> <p>6 inappropriate, but –</p> <p>7 MS. DEITSCH-PEREZ: No, it's not</p> <p>8 John.</p> <p>9 MR. MORRIS: Okay.</p> <p>10 MS. DEITSCH-PEREZ: It's just not.</p> <p>11 You can say it as much as you want. It</p> <p>12 doesn't make it inappropriate.</p> <p>13 And I am going to – I want to think</p> <p>14 for a minute about whether or not your</p> <p>15 request to have him not have it in front of</p> <p>16 him in his individual capacity is</p> <p>17 appropriate. And I'm not going to make a</p> <p>18 snap decision. I'm going to talk to my</p> <p>19 colleagues, and we'll be back on the record</p> <p>20 in a couple of minutes.</p> <p>21 MR. MORRIS: I object, but I can't</p> <p>22 stop you.</p> <p>23 MS. DEITSCH-PEREZ: Okay.</p> <p>24 THE VIDEOGRAPHER: Would you like to</p> <p>25 go off the video record, Counsel?</p>

<p>Page 18</p> <p>1 JAMES DONDERO</p> <p>2 MR. MORRIS: No, no, not at all.</p> <p>3 THE VIDEOGRAPHER: Okay.</p> <p>4 MR. MORRIS: And just keep the --</p> <p>5 keep the record going.</p> <p>6 THE VIDEOGRAPHER: Yep, will do.</p> <p>7 MR. MORRIS: And we're not off the</p> <p>8 record?</p> <p>9 THE VIDEOGRAPHER: Correct.</p> <p>10 THE COURT REPORTER: Correct.</p> <p>11 MS. DEITSCH-PEREZ: Okay. We're</p> <p>12 back on the record.</p> <p>13 THE VIDEOGRAPHER: We remained on</p> <p>14 the record.</p> <p>15 MS. DEITSCH-PEREZ: Okay. And this</p> <p>16 part -- this -- at this point Mr. Morris</p> <p>17 only taking Mr. Dondero's deposition in his</p> <p>18 personal capacity, not as a 30(b)(6)</p> <p>19 witness.</p> <p>20 If you want to resume taking his</p> <p>21 deposition as a 30(b)(6) witness, let me</p> <p>22 know; and I will tell him to get his list</p> <p>23 of notes.</p> <p>24 MR. MORRIS: So he doesn't have it</p> <p>25 in front of him right now?</p>	<p>Page 19</p> <p>1 JAMES DONDERO</p> <p>2 THE WITNESS: Correct.</p> <p>3 MS. DEITSCH-PEREZ: Correct, he does</p> <p>4 not.</p> <p>5 MR. MORRIS: Okay. I'm going to</p> <p>6 proceed; and I would ask, Deborah, that</p> <p>7 somebody from your office send that to me</p> <p>8 as soon as possible. I'm sure it's on an</p> <p>9 e-mail somewhere and all they have to do is</p> <p>10 hit send.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Mr. Dondero, let's continue.</p> <p>13 So you don't have that document in</p> <p>14 front of you right now?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. How many agreements did you</p> <p>17 enter into with Dugaboy?</p> <p>18 MS. DEITSCH-PEREZ: You mean with</p> <p>19 the Dugaboy trustee?</p> <p>20 We had an agreement that you were</p> <p>21 going to refer to these as the agreements</p> <p>22 with the Dugaboy trustee. So let's stay</p> <p>23 consistent.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. Mr. Dondero, how many agreements did</p>
<p>Page 20</p> <p>1 JAMES DONDERO</p> <p>2 you enter into with Dugaboy trustee concerning</p> <p>3 Promissory Notes?</p> <p>4 A. Is your question -- is your</p> <p>5 questions how many Notes were entered into?</p> <p>6 Q. No. How many separate agreements</p> <p>7 did you enter into?</p> <p>8 A. The 2017, '18, and '19 agreements.</p> <p>9 Q. Okay. I didn't ask you what</p> <p>10 agreements. I asked how many agreements you</p> <p>11 entered into with the Dugaboy trustee.</p> <p>12 MS. DEITSCH-PEREZ: Asked and</p> <p>13 answered.</p> <p>14 THE WITNESS: Three major ones.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. Are there any minor ones?</p> <p>17 A. Not that I can recall right now.</p> <p>18 Q. Okay. When did you enter into your</p> <p>19 first major agreement with the Dugaboy trustee?</p> <p>20 A. At the end of '17.</p> <p>21 Q. Meaning December 2017 or early 2018?</p> <p>22 A. Yes.</p> <p>23 Q. What Promissory Notes are the</p> <p>24 subject of the first major agreement that you</p> <p>25 entered into with the Dugaboy trust- -- with</p>	<p>Page 21</p> <p>1 JAMES DONDERO</p> <p>2 the Dugaboy trustee?</p> <p>3 A. I don't remember which ones</p> <p>4 specifically. I remember the amount was more</p> <p>5 substantial than subsequent years.</p> <p>6 Q. Do you know how many Promissory</p> <p>7 Notes were the subject of your first major</p> <p>8 agreement with the Dugaboy trustee?</p> <p>9 A. No.</p> <p>10 Q. Can you identify the maker of any</p> <p>11 Note that's subject to the first major</p> <p>12 agreement with the Dugaboy trustee?</p> <p>13 A. Not without my list or details.</p> <p>14 Q. Can you identify the principal</p> <p>15 amount of any Promissory Note that was subject</p> <p>16 to the first agreement that you entered into</p> <p>17 with the Dugaboy trustee?</p> <p>18 A. I know they were -- I know the gross</p> <p>19 amount. I know they were some of the term</p> <p>20 loans, but I don't know the specifics.</p> <p>21 Q. Can you tell me the aggregate</p> <p>22 amount -- withdrawn.</p> <p>23 Can you tell me the aggregate</p> <p>24 principal amount of the Notes that are the</p> <p>25 subject of your first agreement with the</p>

<p>Page 22</p> <p>1 JAMES DONDERO</p> <p>2 Dugaboy trustee?</p> <p>3 A. I – I believe it was 30 – 30 some</p> <p>4 odd million, 30 – I can't remember the</p> <p>5 principal and interest, but it's only 30 – 34,</p> <p>6 35, 36. It was in that range.</p> <p>7 Q. Did your first agreement with the –</p> <p>8 withdrawn.</p> <p>9 Can you identify the date of any of</p> <p>10 the Promissory Notes that are the subject of</p> <p>11 your first agreement with the Dugaboy trustee?</p> <p>12 A. No.</p> <p>13 Q. Can you tell me the year that any of</p> <p>14 the Promissory Notes that are the subject of</p> <p>15 the – withdrawn.</p> <p>16 Can you tell me the year that any of</p> <p>17 the Promissory Notes were entered into that are</p> <p>18 the subject of your first agreement with the</p> <p>19 Dugaboy trustee?</p> <p>20 MS. DEITSCH-PEREZ: Asked and</p> <p>21 answered.</p> <p>22 THE WITNESS: No, not off the top of</p> <p>23 my head.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. When did you – did – when did you</p>	<p>Page 23</p> <p>1 JAMES DONDERO</p> <p>2 enter into the second agreement with the</p> <p>3 Dugaboy trustee?</p> <p>4 Was that in December of 2018 or</p> <p>5 early 2019?</p> <p>6 A. Yes.</p> <p>7 Q. How many Notes are subject to your</p> <p>8 second agreement with the Dugaboy trustee?</p> <p>9 A. Less than the first, but I don't</p> <p>10 know how many.</p> <p>11 Q. You don't know the number of Notes</p> <p>12 that are the subject of your second agreement</p> <p>13 with the Dugaboy trustee; is that right?</p> <p>14 A. Correct.</p> <p>15 Q. Can you identify the maker of any</p> <p>16 Notes that are the subject of your second</p> <p>17 agreement with the Dugaboy trustee?</p> <p>18 A. No, I – I – no, I don't remember.</p> <p>19 Q. Okay. So as you sit here right now,</p> <p>20 you can't identify the maker of any of the</p> <p>21 Notes that are the subject of the second</p> <p>22 agreement with the Dugaboy trustee; is that</p> <p>23 right?</p> <p>24 A. Well, it would be one of the three</p> <p>25 parties or four parties here, me or NexPoint or</p>
<p>Page 24</p> <p>1 JAMES DONDERO</p> <p>2 whatever; but I don't remember –</p> <p>3 Q. Okay.</p> <p>4 A. – off the top of my head.</p> <p>5 Q. Off the top of your head, can you</p> <p>6 tell me the original principal amount of any</p> <p>7 Note that's subject to your second agreement</p> <p>8 with the Dugaboy trustee?</p> <p>9 A. No. I just – no.</p> <p>10 Q. Can you identify the date on which</p> <p>11 any of the Promissory Notes were executed that</p> <p>12 were the subject of your second agreement with</p> <p>13 the Dugaboy trustee?</p> <p>14 A. No.</p> <p>15 Q. Can you tell me the aggregate</p> <p>16 principal amount of the Notes that are the</p> <p>17 subject of your second agreement with the</p> <p>18 Dugaboy trustee?</p> <p>19 A. Yes. A fraction of the prior year.</p> <p>20 Less than ten million.</p> <p>21 Q. Can you be anymore precise than</p> <p>22 that?</p> <p>23 A. Approximately ten million, I think.</p> <p>24 Just under.</p> <p>25 Q. Okay. Did you enter into your third</p>	<p>Page 25</p> <p>1 JAMES DONDERO</p> <p>2 agreement with the Dugaboy trustee in December</p> <p>3 2019 or early 2020?</p> <p>4 A. Yes.</p> <p>5 Q. That's after the petition date; do I</p> <p>6 have that right?</p> <p>7 A. I – yes.</p> <p>8 Q. Did you do it before or after</p> <p>9 January 9, 2020?</p> <p>10 A. Before, I believe.</p> <p>11 Q. So while you were still in control</p> <p>12 of Highland but after the petition date, you</p> <p>13 entered into your third agreement with the</p> <p>14 Dugaboy trustee concerning Promissory Notes.</p> <p>15 Do I have that right?</p> <p>16 A. Yes.</p> <p>17 Q. Did you ever inform the bankruptcy</p> <p>18 court of this agreement?</p> <p>19 A. No.</p> <p>20 Q. Did you ever inform the independent</p> <p>21 directors of this agreement that you entered</p> <p>22 into after the petition date?</p> <p>23 A. No.</p> <p>24 Q. Can you tell me which notes are the</p> <p>25 subject of your third agreement with the</p>

<p>Page 26</p> <p>1 JAMES DONDERO</p> <p>2 Dugaboy trustee?</p> <p>3 A. No.</p> <p>4 Q. Can you identify the maker on any</p> <p>5 Note that's the subject of your agreement that</p> <p>6 you entered into after the petition date with</p> <p>7 the Dugaboy trustee?</p> <p>8 A. Not off the top of my head.</p> <p>9 MS. DEITSCH-PEREZ: I mean, John, if</p> <p>10 you would let him look at his list, he</p> <p>11 could tell you.</p> <p>12 But if you insist on making this a</p> <p>13 memory test of 18 or so different things or</p> <p>14 however many there are, 13, 14, then this</p> <p>15 is – it's your deposition. But if you</p> <p>16 want more specific details, he could look</p> <p>17 at the list.</p> <p>18 MR. MORRIS: Okay. That's not even</p> <p>19 an objection let alone a speaking</p> <p>20 objection.</p> <p>21 It is my deposition –</p> <p>22 MS. DEITSCH-PEREZ: No.</p> <p>23 MR. MORRIS: It is my deposition,</p> <p>24 and I would appreciate your not making</p> <p>25 gratuitous comments.</p>	<p>Page 27</p> <p>1 JAMES DONDERO</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. Mr. Dondero, can you tell me the</p> <p>4 aggregate value of the Notes that are the</p> <p>5 subject of the third agreement that you entered</p> <p>6 into with the Dugaboy trustee after the</p> <p>7 petition date?</p> <p>8 A. I believe it was about a million</p> <p>9 bucks.</p> <p>10 Q. And who were the makers of the Notes</p> <p>11 that are the subject of the agreement with the</p> <p>12 Dugaboy trustee that you entered into after the</p> <p>13 petition date?</p> <p>14 A. I don't know.</p> <p>15 Q. Without the sheet that you looked at</p> <p>16 earlier, you have no ability to tell me which</p> <p>17 notes were the subject of which agreement that</p> <p>18 you entered into with the Dugaboy trustee,</p> <p>19 correct?</p> <p>20 MS. DEITSCH-PEREZ: Object to the</p> <p>21 form.</p> <p>22 THE WITNESS: If I'm not certain off</p> <p>23 the top of my head I can remember</p> <p>24 accurately, I don't want to speculate.</p> <p>25</p>
<p>Page 28</p> <p>1 JAMES DONDERO</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. All right. I don't want you to</p> <p>4 speculate either. So I'm going to ask you just</p> <p>5 broad follow-up questions.</p> <p>6 Can you identify any Promissory Note</p> <p>7 that is the subject of any specific agreement</p> <p>8 that you ever entered into with the Dugaboy</p> <p>9 trustee without looking at the list?</p> <p>10 MS. DEITSCH-PEREZ: Object to the</p> <p>11 form. He's already done that to some</p> <p>12 degree.</p> <p>13 THE WITNESS: I believe it covered</p> <p>14 virtually all of them. So I don't remember</p> <p>15 which ones specifically in each year.</p> <p>16 Generally, it was, I believe, the</p> <p>17 ones incurred in that year; but I don't</p> <p>18 remember which entities. But again, the</p> <p>19 ultimate result being that the term loans,</p> <p>20 the demand notes, the things incurred, the</p> <p>21 things outstanding were part of the</p> <p>22 agreement.</p> <p>23 BY MR. MORRIS:</p> <p>24 Q. Sir, you never wrote down a list of</p> <p>25 the notes that are the subject of the</p>	<p>Page 29</p> <p>1 JAMES DONDERO</p> <p>2 agreements, correct?</p> <p>3 A. Correct.</p> <p>4 Q. You never asked anybody to make a</p> <p>5 list of the notes that were the subject of each</p> <p>6 of the agreements, correct?</p> <p>7 A. Correct.</p> <p>8 Q. You're not aware of any document</p> <p>9 that was created prior to the commencement of</p> <p>10 these lawsuits that identifies the Notes that</p> <p>11 are the subject of the agreements, correct?</p> <p>12 A. Correct.</p> <p>13 Q. Other than the Promissory Notes that</p> <p>14 are the subject of this lawsuit – withdrawn.</p> <p>15 Other than the Promissory Notes that</p> <p>16 are the subject of these lawsuits, are you</p> <p>17 aware of any other doc- – Promissory Notes</p> <p>18 that are the subject of an agreement with the</p> <p>19 Dugaboy trustee?</p> <p>20 A. I believe there are from time to</p> <p>21 time, yes. But I – I don't know off the top</p> <p>22 of my head.</p> <p>23 Q. Can you identify the maker of any</p> <p>24 Promissory Note that is the subject of any</p> <p>25 agreement with the Dugaboy trustee other than</p>

<p>Page 30</p> <p>1 JAMES DONDERO</p> <p>2 the Promissory Notes that are the subject of</p> <p>3 the pending lawsuits?</p> <p>4 A. Not specifically, but I believe</p> <p>5 there are.</p> <p>6 Q. Okay. Can you identify the</p> <p>7 principal amount of any Promissory Note that is</p> <p>8 the subject of an agreement with the Dugaboy</p> <p>9 trustee that is not part of the pending</p> <p>10 lawsuits?</p> <p>11 A. Not specifically.</p> <p>12 Q. Can you tell me the year in which</p> <p>13 any Promissory Note was ever executed that is</p> <p>14 the subject of any agreement with the Dugaboy</p> <p>15 trustee other than the Promissory Notes that</p> <p>16 are the subject of the pending lawsuits?</p> <p>17 A. I believe there were several, and I</p> <p>18 believe there were numerous ones over the</p> <p>19 years.</p> <p>20 Q. Okay. And -- and are those</p> <p>21 Promissory Notes subject to one of the three</p> <p>22 agreements that we've identified or subject to</p> <p>23 some other agreement with the Dugaboy trustee?</p> <p>24 A. Well, they weren't to these related</p> <p>25 entities. I -- I don't know what the</p>	<p>Page 31</p> <p>1 JAMES DONDERO</p> <p>2 agreements were specifically subject to.</p> <p>3 Q. Are you the person who entered into</p> <p>4 the agreement with the Dugaboy trustee</p> <p>5 concerning the notes that you are describing</p> <p>6 right now?</p> <p>7 A. Yes, I guess.</p> <p>8 Q. As the person who entered into the</p> <p>9 agreement with the Dugaboy trustee concerning</p> <p>10 Notes that are not the subject of the pending</p> <p>11 litigation, can you identify anything about</p> <p>12 those Notes, whether it's the maker, the date,</p> <p>13 the principal amount, anything at all?</p> <p>14 A. Not off the top of my head.</p> <p>15 Q. Okay. What would -- what would you</p> <p>16 have to look at to know? The chart or</p> <p>17 something else?</p> <p>18 A. No, not this -- not this chart.</p> <p>19 This only has to do with what we thought this</p> <p>20 deposition was going to be about.</p> <p>21 It would be the financials of</p> <p>22 Dugaboy; and then from there, the detail</p> <p>23 regarding any Notes that it has.</p> <p>24 Q. Did you enter into an agreement with</p> <p>25 the Dugaboy trustee to forgive a Promissory</p>
<p>Page 32</p> <p>1 JAMES DONDERO</p> <p>2 Note where Dugaboy is the maker and Highland is</p> <p>3 the payee?</p> <p>4 A. Dugaboy -- can you repeat that</p> <p>5 question one more time?</p> <p>6 Q. Sure. Did you enter into an</p> <p>7 agreement with the Dugaboy trustee relating to</p> <p>8 any Promissory Note where Dugaboy is the maker?</p> <p>9 A. No, I don't believe so.</p> <p>10 Q. Okay. So you don't have any</p> <p>11 recollection of ever entering into an agreement</p> <p>12 with the Dugaboy trustee concerning the</p> <p>13 potential forgiveness of any Note that was made</p> <p>14 by Dugaboy, correct?</p> <p>15 A. I -- I do not believe so.</p> <p>16 Q. Okay. And is there a -- is there a</p> <p>17 document that we could look at that would</p> <p>18 refresh your recollection?</p> <p>19 A. Not beyond the financials of Dugaboy</p> <p>20 and any relevant Note detail.</p> <p>21 Q. And would -- is it -- is it your</p> <p>22 testimony that an agreement with Dugaboy would</p> <p>23 be reflected in the Dugaboy financial</p> <p>24 statements?</p> <p>25 A. No, but the Notes would be.</p>	<p>Page 33</p> <p>1 JAMES DONDERO</p> <p>2 Q. Well, the Dugaboy Notes are</p> <p>3 reflected in Highland's financial statements.</p> <p>4 Do you want me to get that?</p> <p>5 A. No. I didn't think that was -- I</p> <p>6 didn't think that was the question you were</p> <p>7 asking me.</p> <p>8 Q. I apologize. Maybe it was my fault.</p> <p>9 What would we have to look at in</p> <p>10 order to refresh your recollection as to</p> <p>11 whether or not you entered into an agreement</p> <p>12 with the Dugaboy trustee concerning the</p> <p>13 potential forgiveness of any Note made by</p> <p>14 Dugaboy?</p> <p>15 A. Other than the ones we're talking</p> <p>16 about today, right?</p> <p>17 Q. We're not talking about -- there's</p> <p>18 no Promissory Note where Dugaboy is the maker</p> <p>19 that is the subject of any of the pending</p> <p>20 lawsuits, correct?</p> <p>21 A. Correct.</p> <p>22 Q. So I'm asking you to identify if you</p> <p>23 can any Promissory Note that is the subject of</p> <p>24 any agreement you have ever entered into with</p> <p>25 the Dugaboy trustee that is not the subject of</p>

<p>Page 34</p> <p>1 JAMES DONDERO</p> <p>2 one of the pending lawsuits.</p> <p>3 Do you understand that that's what</p> <p>4 I'm trying to get at?</p> <p>5 MS. DEITSCH-PEREZ: Asked and</p> <p>6 answered.</p> <p>7 THE WITNESS: Yes.</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. Okay. Can you identify any such</p> <p>10 Promissory Note?</p> <p>11 A. No, not specifically as I sit here</p> <p>12 today.</p> <p>13 Q. Okay. Other than the promissory –</p> <p>14 withdrawn.</p> <p>15 Are you familiar with the term</p> <p>16 "majority interest" as used in the Highland</p> <p>17 Limited Partnership Agreement?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Other than the Promissory</p> <p>20 Notes that are the subject of the pending</p> <p>21 lawsuits, are you aware of any other Promissory</p> <p>22 Notes that are the subject of any agreement</p> <p>23 with the majority interest?</p> <p>24 MS. DEITSCH-PEREZ: Object to the</p> <p>25 form. Asked and answered.</p>	<p>Page 35</p> <p>1 JAMES DONDERO</p> <p>2 THE WITNESS: The majority interest</p> <p>3 is controlled by the 75 percent. It's</p> <p>4 controlled by Dugaboy. But the majority</p> <p>5 interest isn't an entity in and of itself,</p> <p>6 right?</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. Okay. Has Dugaboy held the majority</p> <p>9 interest since the time that Highland was</p> <p>10 created?</p> <p>11 A. No.</p> <p>12 Q. Okay. So – so then I'm going to</p> <p>13 ask my question again.</p> <p>14 Are you aware of any agreement</p> <p>15 concerning any Promissory Note that is the</p> <p>16 subject – withdrawn.</p> <p>17 Are you aware of any agreement with</p> <p>18 the majority interest that concerns any</p> <p>19 Promissory Note where Highland is the payee</p> <p>20 other than the Notes that are the subject of</p> <p>21 the pending lawsuit?</p> <p>22 MS. DEITSCH-PEREZ: Asked and</p> <p>23 answered.</p> <p>24 THE WITNESS: Not specifically as I</p> <p>25 sit here today, but I do believe there have</p>
<p>Page 36</p> <p>1 JAMES DONDERO</p> <p>2 been numerous notes other than to these</p> <p>3 entities today where Dugaboy was the maker</p> <p>4 or recipient or whatever.</p> <p>5 BY MR. MORRIS:</p> <p>6 Q. So you do believe that Dugaboy was</p> <p>7 the maker of a Promissory Note that's subject</p> <p>8 to an agreement with the majority interest?</p> <p>9 MS. DEITSCH-PEREZ: Object to the</p> <p>10 form.</p> <p>11 THE WITNESS: What I'm saying is I</p> <p>12 believe Dugaboy had other – made other</p> <p>13 Notes and received other Notes from other</p> <p>14 entities other than Highland.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. Does that have anything to do with</p> <p>17 Highland?</p> <p>18 Maybe I wasn't clear. I'm using the</p> <p>19 phrase "majority interest" as that phrase – I</p> <p>20 thought we had – I thought we had an</p> <p>21 understanding – as that phrase is used in the</p> <p>22 Highland Limited Partnership Agreement, right?</p> <p>23 A. I thought it was a definition term</p> <p>24 in the Highland, L.P.</p> <p>25 Q. It is, and I just – I'd like to</p>	<p>Page 37</p> <p>1 JAMES DONDERO</p> <p>2 move on if I can, but I just want some clarity</p> <p>3 here.</p> <p>4 Is there any agreement between</p> <p>5 Dugaboy and the majority interest concerning</p> <p>6 any Promissory Note where Dugaboy is the maker?</p> <p>7 MS. DEITSCH-PEREZ: Object to the</p> <p>8 form.</p> <p>9 THE WITNESS: I – I don't know what</p> <p>10 you're getting at. I have a tried to</p> <p>11 answer it the best I can several different</p> <p>12 ways.</p> <p>13 But try it one more time, and I'll</p> <p>14 try and answer it just specifically yes or</p> <p>15 no.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. Okay. Is Dugaboy the maker on any</p> <p>18 Promissory Note where Highland is the payee?</p> <p>19 A. I don't believe so at this point.</p> <p>20 Q. Was Dugaboy ever the maker on a Note</p> <p>21 where Highland was the payee to the best of</p> <p>22 your knowledge?</p> <p>23 A. I don't – I just don't know what</p> <p>24 the actual accounting was or could have or</p> <p>25 should have been. But if it prepays a Note,</p>

<p>Page 38</p> <p>1 JAMES DONDERO</p> <p>2 instead of prepaying a Note, it could have left</p> <p>3 it in an existing Note outstanding and then</p> <p>4 issued a separate Note, right, instead of</p> <p>5 prepaying, right?</p> <p>6 So I don't know in the -- in the pas</p> <p>7 past or how exactly they handled prepays</p> <p>8 consistently over time. But at the moment, I</p> <p>9 don't believe there's a loan going from Dugaboy</p> <p>10 to Highland.</p> <p>11 But I do believe over the years,</p> <p>12 there were numerous loans from Dugaboy to other</p> <p>13 entities other than the ones we're talking</p> <p>14 about today.</p> <p>15 MS. DEITSCH-PEREZ: Okay. John,</p> <p>16 we've gone way far afield of the topics for</p> <p>17 this deposition or anything that you ought</p> <p>18 to be even asking this individual witness</p> <p>19 about given what these litigations are.</p> <p>20 Could we move on, please?</p> <p>21 MR. MORRIS: No. Other than --</p> <p>22 MS. DEITSCH-PEREZ: You're spending</p> <p>23 time on things other than the --</p> <p>24 MR. MORRIS: Please stop talking.</p> <p>25 MS. DEITSCH-PEREZ: -- action.</p>	<p>Page 39</p> <p>1 JAMES DONDERO</p> <p>2 MR. MORRIS: Please stop talking.</p> <p>3 BY MR. MORRIS:</p> <p>4 Q. Other than the Promissory Notes that</p> <p>5 are the subject of the lawsuits, are you aware</p> <p>6 of any other Promissory Notes that are the</p> <p>7 subject of any agreement that the Dugaboy</p> <p>8 trustee ever entered into as a representative</p> <p>9 of the majority of Class A shareholders?</p> <p>10 MS. DEITSCH-PEREZ: Asked and</p> <p>11 answered. I think we've answered after the</p> <p>12 sixth time.</p> <p>13 THE WITNESS: Not as I sit here</p> <p>14 today.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. In paragraph 82 in about the fifth</p> <p>17 line down, there's a statement that, quote,</p> <p>18 "Nancy Dondero is representative for a majority</p> <p>19 of the Class A holders of plaintiff, agree that</p> <p>20 plaintiff would forgive the Notes."</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. The word "plaintiff" as used in your</p> <p>24 answer refers to Highland Capital Management,</p> <p>25 L.P., correct?</p>
<p>Page 40</p> <p>1 JAMES DONDERO</p> <p>2 A. I -- no -- or wait. Hold on a</p> <p>3 second.</p> <p>4 Yes. I guess, yes.</p> <p>5 Q. Okay. At the time you entered into</p> <p>6 the agreements, did you understand that</p> <p>7 Dugaboy, as a majority -- as a representative</p> <p>8 of a majority of the Class A shareholders of</p> <p>9 the plaintiff was the entity that entered into</p> <p>10 the agreement on behalf of Highland?</p> <p>11 A. Yes.</p> <p>12 Q. And your sister Nancy is the trustee</p> <p>13 of Dugaboy today, correct?</p> <p>14 A. Yes.</p> <p>15 Q. And Nancy was the trustee of Dugaboy</p> <p>16 at the time you entered into each of the</p> <p>17 agreements, correct?</p> <p>18 A. Yes.</p> <p>19 Q. And you knew that at the time you</p> <p>20 entered each of the agreements, correct?</p> <p>21 A. Yes.</p> <p>22 Q. You knew she was acting on behalf of</p> <p>23 Dugaboy, correct?</p> <p>24 A. Yes.</p> <p>25 Q. Your understanding at that time that</p>	<p>Page 41</p> <p>1 JAMES DONDERO</p> <p>2 you entered into each of the agreements with</p> <p>3 the Dugaboy trustee was that Dugaboy held the</p> <p>4 majority of Highland's Class A interest,</p> <p>5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. And that's exactly why you contacted</p> <p>8 Nancy to discuss the topics that ultimately led</p> <p>9 to the agreements, correct?</p> <p>10 A. Yes.</p> <p>11 Q. You specifically called Nancy</p> <p>12 because you wanted her to cause Dugaboy to</p> <p>13 enter into the agreements with you on behalf of</p> <p>14 Highland, correct?</p> <p>15 A. Yes.</p> <p>16 Q. And just as you wanted, Nancy, in</p> <p>17 fact, caused Dugaboy, as a representative of a</p> <p>18 majority of the Class A shareholders of</p> <p>19 plaintiff, to enter into each of the</p> <p>20 agreements, correct?</p> <p>21 A. Yes.</p> <p>22 Q. Would you agree with me that the</p> <p>23 Promissory Notes that are the subject of the</p> <p>24 agreements were the debtor's property?</p> <p>25 A. I think I've stated numerous times</p>

<p>Page 42</p> <p>1 JAMES DONDERO</p> <p>2 due to them as that they would ultimately be</p> <p>3 compensation; but to be a bona fide Note and to</p> <p>4 have bona fide deferral at the time that they</p> <p>5 were issued, they were the debtor's property.</p> <p>6 And I guess they remained such until satisfied</p> <p>7 or until the condition as present – the</p> <p>8 condition subsequent is either triggered or</p> <p>9 impossible to be triggered.</p> <p>10 Q. Okay. Is it fair to say that the</p> <p>11 Promissory Notes that are the subject of the</p> <p>12 agreements were assets of the debtor at the</p> <p>13 time you entered into the agreements?</p> <p>14 A. Yes.</p> <p>15 Q. At the time you entered into the</p> <p>16 agreements, you understood that Dugaboy was</p> <p>17 exercising control over the debtor's property,</p> <p>18 correct?</p> <p>19 MS. DEITSCH-PEREZ: Object to the</p> <p>20 form.</p> <p>21 MR. MORRIS: Withdrawn.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q. At the time you entered into the</p> <p>24 agreements, you understood that the Dugaboy</p> <p>25 trustee was going to exercise control over the</p>	<p>Page 43</p> <p>1 JAMES DONDERO</p> <p>2 debtor's property, correct?</p> <p>3 MS. DEITSCH-PEREZ: Object. Object</p> <p>4 to the form.</p> <p>5 THE WITNESS: Exercise control? I</p> <p>6 understood the trustee had the ability to</p> <p>7 grant the, whatever you want to call them,</p> <p>8 conditions subsequent.</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. On that –</p> <p>11 A. Yes.</p> <p>12 Q. And that was – by entering into the</p> <p>13 agreement, would you agree with me, that the</p> <p>14 Dugaboy trustee exercised control over the</p> <p>15 Promissory Notes?</p> <p>16 MS. DEITSCH-PEREZ: Object to the</p> <p>17 form.</p> <p>18 THE WITNESS: They – The trustee</p> <p>19 exercised the rights given to it as a</p> <p>20 majority of Class A holders.</p> <p>21 BY MR. MORRIS:</p> <p>22 Q. Okay. And is it your understanding</p> <p>23 that as part of the right, it altered the</p> <p>24 characteristics of the Promissory Notes?</p> <p>25 MS. DEITSCH-PEREZ: Object to the</p>
<p>Page 44</p> <p>1 JAMES DONDERO</p> <p>2 form.</p> <p>3 THE WITNESS: I just want to – I</p> <p>4 believe my testimony, I granted the</p> <p>5 conditions subsequent is my interpretation.</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. Right. And so that's fine. But</p> <p>8 that's – that's the thing that happened, but</p> <p>9 I'm just asking you what the impact of that</p> <p>10 was.</p> <p>11 When the Dugaboy trustee entered</p> <p>12 into the agreement, the result was that the</p> <p>13 terms and conditions of the Promissory Note</p> <p>14 were altered, correct?</p> <p>15 MS. DEITSCH-PEREZ: Object to the</p> <p>16 form.</p> <p>17 THE WITNESS: I don't want to – I</p> <p>18 want to say I don't know to that next week.</p> <p>19 BY MR. MORRIS:</p> <p>20 Q. You can't – okay. You can't tell</p> <p>21 me if your agreement with the Dugaboy trustee</p> <p>22 altered the terms and conditions of the</p> <p>23 Promissory Notes that were subject to the</p> <p>24 agreement; you can't tell me that?</p> <p>25 MS. DEITSCH-PEREZ: Object to the</p>	<p>Page 45</p> <p>1 JAMES DONDERO</p> <p>2 form.</p> <p>3 THE WITNESS: Yeah. I – again, it</p> <p>4 sounds like you're trying to take me</p> <p>5 towards legal terms of changing terms or</p> <p>6 modification in a Note or whatever; and</p> <p>7 I – I'm not – I don't have an opinion or</p> <p>8 the expert to comment on that.</p> <p>9 I can just say I knew she had the</p> <p>10 ability to create conditions subsequent.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Okay. So let's take, for example,</p> <p>13 the Notes that you signed.</p> <p>14 Those were demand notes, right?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And after you entered into</p> <p>17 the agreement with the Dugaboy trustee, instead</p> <p>18 of it being a demand note, it was now a demand</p> <p>19 note subject to conditions subsequent, correct?</p> <p>20 MS. DEITSCH-PEREZ: Object to the</p> <p>21 form.</p> <p>22 THE WITNESS: Yeah, that ultimately</p> <p>23 they couldn't be demanded until conditions</p> <p>24 subsequent were met or unable to be met.</p> <p>25</p>

<p>Page 46</p> <p>1 JAMES DONDERO</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. Okay. So can you agree with me that</p> <p>4 that -- that that was a change in the term of</p> <p>5 the Note?</p> <p>6 MS. DEITSCH-PEREZ: Object to the</p> <p>7 form.</p> <p>8 THE WITNESS: Yeah. See, that's the</p> <p>9 part I don't want to comment on. I just</p> <p>10 want to say I don't know.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Okay. Wasn't that the purpose of</p> <p>13 entering into the agreements was to change the</p> <p>14 terms of the each of the Promissory Notes?</p> <p>15 Wasn't that your intent?</p> <p>16 MS. DEITSCH-PEREZ: Object to the</p> <p>17 form.</p> <p>18 THE WITNESS: I'd say the intent was</p> <p>19 to find and make compensation appropriate</p> <p>20 for industry standards and Highland in</p> <p>21 particular.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q. And did you believe that the Notes</p> <p>24 as originally drafted and signed by you or the</p> <p>25 representatives of the makers didn't take that</p>	<p>Page 47</p> <p>1 JAMES DONDERO</p> <p>2 into account?</p> <p>3 A. I went through this already last</p> <p>4 time, but the Notes were intentionally loose</p> <p>5 and, I think, anticipated the ability to adjust</p> <p>6 the subsequent conditions or other things.</p> <p>7 Q. Now, you told me that each of the</p> <p>8 agreements was entered into between December of</p> <p>9 one year or -- actually, withdrawn.</p> <p>10 If we look at paragraph 82, it says</p> <p>11 that each of the agreements was made, quote,</p> <p>12 "sometime between the December of the year in</p> <p>13 which each note was made and February of the</p> <p>14 following year."</p> <p>15 Do I have that right?</p> <p>16 A. Yes.</p> <p>17 Q. Can you identify with any greater</p> <p>18 specificity when you entered into the first</p> <p>19 agreement with the Dugaboy trustee referenced</p> <p>20 in paragraph 82?</p> <p>21 A. No.</p> <p>22 Q. It's sometime within that 90-day</p> <p>23 period; does that sound right to you?</p> <p>24 A. I believe it was closer to the</p> <p>25 holidays around the turn of the year, but I</p>
<p>Page 48</p> <p>1 JAMES DONDERO</p> <p>2 don't have specific recollection.</p> <p>3 Q. Is that answer the same for all</p> <p>4 three agreements or only for the first</p> <p>5 agreement?</p> <p>6 A. That would be the same for all</p> <p>7 three.</p> <p>8 Q. So then why -- why does paragraph 82</p> <p>9 refer to sometime between December of the year</p> <p>10 in which each note was made and February of the</p> <p>11 following year if your best recollection is</p> <p>12 that it happened around the holidays?</p> <p>13 A. I don't know.</p> <p>14 Q. All right. But as you sit here</p> <p>15 right now, is it your testimony that you</p> <p>16 believe each of the agreements was signed --</p> <p>17 was more likely signed in December rather than</p> <p>18 January or February?</p> <p>19 MS. DEITSCH-PEREZ: Object to the</p> <p>20 form.</p> <p>21 THE WITNESS: I think signed is a --</p> <p>22 I'm not -- I'm not testifying that signed,</p> <p>23 I guess.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. I apologize. Maybe that was my</p>	<p>Page 49</p> <p>1 JAMES DONDERO</p> <p>2 mistake.</p> <p>3 Is it your testimony that each --</p> <p>4 that you entered each of the agreements with</p> <p>5 the Dugaboy trustee in December rather than</p> <p>6 January or February of the years indicated?</p> <p>7 A. That's the best of my recollection,</p> <p>8 but there may have been one year that was</p> <p>9 towards the wider end of the interval. I can't</p> <p>10 remember with more specificity.</p> <p>11 Q. Okay. Do you know of anything that</p> <p>12 memorialized the date on which you entered into</p> <p>13 any of the agreements?</p> <p>14 A. No, other than -- no, other than --</p> <p>15 no, other than, you know, other than travel</p> <p>16 schedule or phone logs or whatever.</p> <p>17 Q. All right. During the discussion</p> <p>18 that led to the agreements, did you ever</p> <p>19 provide any information to Nancy or to Dugaboy</p> <p>20 concerning your compensation?</p> <p>21 A. Just -- just verbal. I mean, she</p> <p>22 knew it was low, and she knew we had reinvested</p> <p>23 most everything we made back in the company</p> <p>24 over the years. And that was the -- that was,</p> <p>25 I think, understanding by all involved; and it</p>

<p>Page 50</p> <p>1 JAMES DONDERO</p> <p>2 should be obvious to anybody who's looked at</p> <p>3 the numbers even in hindsight.</p> <p>4 MR. MORRIS: Okay. I move to</p> <p>5 strike.</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. And please listen carefully to my</p> <p>8 question.</p> <p>9 During the discussions that led to</p> <p>10 each of the agreements, did you ever provide</p> <p>11 any information to your sister or Dugaboy</p> <p>12 concerning your compensation?</p> <p>13 MS. DEITSCH-PEREZ: Asked and</p> <p>14 answered.</p> <p>15 THE WITNESS: Not specifically.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. Did you provide any general</p> <p>18 information to your sister or to Dugaboy prior</p> <p>19 to the entry of any of the three agreements</p> <p>20 that you entered into with the Dugaboy trustee?</p> <p>21 A. I would repeat the answer that was</p> <p>22 struck two questions ago.</p> <p>23 Q. That's the information that you gave</p> <p>24 to her?</p> <p>25 A. Yeah. It was -- again, it was</p>	<p>Page 51</p> <p>1 JAMES DONDERO</p> <p>2 verbal, and it was -- but an understanding but</p> <p>3 a clear and obvious understanding.</p> <p>4 Q. I want to know exactly what</p> <p>5 information you gave to your sister and to</p> <p>6 Dugaboy before entering into any of the three</p> <p>7 agreements with the Dugaboy trustee?</p> <p>8 A. Most of what I had made over the</p> <p>9 years was rolled back into the business to</p> <p>10 propel growth and initiatives. And that my</p> <p>11 actual compensation was very modest based on</p> <p>12 industry standards and relevant</p> <p>13 responsibilities at Highland.</p> <p>14 Q. Did you tell her anything else?</p> <p>15 Withdrawn.</p> <p>16 Did you tell your -- Nancy or</p> <p>17 Dugaboy anything else beyond what you've now</p> <p>18 testified to?</p> <p>19 A. You know, I think some of what I</p> <p>20 testified to earlier, that forgiveness of the</p> <p>21 Notes would be a modest increase in that</p> <p>22 compensation but still not be in the ZIP code</p> <p>23 of fair and appropriate compensation and that</p> <p>24 the value of the Notes in aggregate were de</p> <p>25 minimus relative to Highland and de minimis</p>
<p>Page 52</p> <p>1 JAMES DONDERO</p> <p>2 relative to Dugaboy.</p> <p>3 Q. Did you tell her anything else?</p> <p>4 A. Anything else would have fallen into</p> <p>5 the buckets I just described, but I can't</p> <p>6 remember specifically as I sit here today.</p> <p>7 Q. Did you ever tell your sister or</p> <p>8 Dugaboy that your salary was less than a</p> <p>9 million dollars?</p> <p>10 A. I --</p> <p>11 MS. DEITSCH-PEREZ: I mean, just</p> <p>12 from Highland?</p> <p>13 THE WITNESS: Repeat the question</p> <p>14 again for me, please.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. Did you ever tell your sister that</p> <p>17 your salary was less than a million dollars a</p> <p>18 year?</p> <p>19 A. I know my sister was aware that it</p> <p>20 was very low, and it kind of decreased over</p> <p>21 time, and I think it was paid by different</p> <p>22 entities.</p> <p>23 Whether it was a million or</p> <p>24 2 million, I can't remember exactly what I</p> <p>25 would have told her; but it would have been in</p>	<p>Page 53</p> <p>1 JAMES DONDERO</p> <p>2 that ZIP code to paint the proper picture that</p> <p>3 the cash compensation for somebody in my role</p> <p>4 was well below industry standards.</p> <p>5 Q. Do you recall anything else that you</p> <p>6 shared with your sister concerning your</p> <p>7 compensation that you haven't testified to?</p> <p>8 A. Like I said, it would generally fall</p> <p>9 into those buckets as I sit here today.</p> <p>10 Q. Did your sister or Dugaboy ask you</p> <p>11 any questions about your compensation before</p> <p>12 entering into the three agreements that you</p> <p>13 entered into with the Dugaboy trustee?</p> <p>14 A. And, again, it would fall into the</p> <p>15 buckets I just described.</p> <p>16 Q. Can you -- can you recall any</p> <p>17 question that your sister or Dugaboy asked of</p> <p>18 you concerning your compensation before</p> <p>19 entering into the agreements?</p> <p>20 MS. DEITSCH-PEREZ: Asked answered.</p> <p>21 THE WITNESS: Again, I -- it would</p> <p>22 fall into the buckets I just described.</p> <p>23 BY MR. MORRIS:</p> <p>24 Q. Did you provide any documents to</p> <p>25 your sister or to Dugaboy concerning your</p>

<p>Page 54</p> <p>1 JAMES DONDERO</p> <p>2 compensation before entering into the</p> <p>3 agreements?</p> <p>4 A. No, not that I can recall.</p> <p>5 Q. Did your sister or Dugaboy ask you</p> <p>6 for any documents before entering into – into</p> <p>7 any of the agreements?</p> <p>8 A. I do not – I do not believe so.</p> <p>9 Q. Do you recall that in the ordinary</p> <p>10 course of business, Highland prepared a</p> <p>11 document called a Compensation and Benefits</p> <p>12 Statement for each of its employees?</p> <p>13 A. Yes.</p> <p>14 Q. And was that prepared by the Human</p> <p>15 Resources Group?</p> <p>16 A. Yes.</p> <p>17 Q. And was Mark Collins the head of the</p> <p>18 Human Resources Group?</p> <p>19 A. No.</p> <p>20 Q. Who was the head of the Human</p> <p>21 Resources Group?</p> <p>22 A. Brian Collins.</p> <p>23 Q. I apologize to Mr. Collins. Thank</p> <p>24 you for the correction.</p> <p>25 And Mr. Collins and his team were</p>	<p>Page 55</p> <p>1 JAMES DONDERO</p> <p>2 responsible for preparing the annual</p> <p>3 Compensation and Benefits Statements for</p> <p>4 Highland's employees, correct?</p> <p>5 A. Yes.</p> <p>6 Q. And did you instruct them to do</p> <p>7 that?</p> <p>8 A. Not specifically.</p> <p>9 Q. Okay.</p> <p>10 A. They do it every year. They do it</p> <p>11 every year as a matter of course, so I guess no</p> <p>12 is the answer.</p> <p>13 Q. Okay. So in the ordinary course of</p> <p>14 business, Mr. Collins and his team would</p> <p>15 prepare Compensation and Benefits Statements</p> <p>16 for each of Highland's employees on an annual</p> <p>17 basis, right?</p> <p>18 A. Yes.</p> <p>19 Q. Okay.</p> <p>20 MR. MORRIS: Can we please put up</p> <p>21 Exhibit 68.</p> <p>22 MS. CANTY: (Complies with request.)</p> <p>23</p> <p>24</p> <p>25</p>
<p>Page 56</p> <p>1 JAMES DONDERO</p> <p>2 (Whereupon, Exhibit 68, James</p> <p>3 Dondero Compensation and Benefits</p> <p>4 Statement, Bates stamped D-CNL003585,</p> <p>5 marked for identification, as of this</p> <p>6 date.)</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. Do you see the document that's been</p> <p>9 premarked as Exhibit 68 that's up on the</p> <p>10 screen, sir?</p> <p>11 A. Yup.</p> <p>12 Q. And does this appear to be the form</p> <p>13 of annual Compensation and Benefits Statement</p> <p>14 that Mr. Collins and his team prepared on an</p> <p>15 annual basis for Highland's employees?</p> <p>16 A. This looks like the format, yes.</p> <p>17 Q. Okay. And the Compensation and</p> <p>18 Benefits Statement was intended to set forth</p> <p>19 the types and the amounts of compensation each</p> <p>20 employee received each year, correct?</p> <p>21 A. Yes, generally.</p> <p>22 Q. Okay. Did you ever disclose any</p> <p>23 information on this page to Nancy or to</p> <p>24 Dugaboy?</p> <p>25 A. Honestly, I don't think I've ever</p>	<p>Page 57</p> <p>1 JAMES DONDERO</p> <p>2 seen my award letters before.</p> <p>3 Q. Okay. So you never – so then it's</p> <p>4 a fair to say you never showed this letter to</p> <p>5 your sister or to Dugaboy, correct?</p> <p>6 A. Correct.</p> <p>7 Q. Okay. Did you ever disclose to</p> <p>8 Nancy or to Dugaboy the salary that's reflected</p> <p>9 on this document?</p> <p>10 A. I can't remember specifically beyond</p> <p>11 what I've already testified.</p> <p>12 Q. Did you ever describe for Nancy or</p> <p>13 for Dugaboy the 2016 deferred compensation</p> <p>14 award that's reflected on this document?</p> <p>15 A. No. I – by the way, I think that's</p> <p>16 only 20 percent vested a year. I think that's</p> <p>17 a gross amount. But no, I never – I never</p> <p>18 discussed that with her.</p> <p>19 Q. Okay. Do you see in the</p> <p>20 compensation award refers to 50,000 restricted</p> <p>21 stock units of NXRT relating to your 2016</p> <p>22 performance?</p> <p>23 A. Yes.</p> <p>24 Q. What is NXRT?</p> <p>25 A. That's the REIT that Highland used</p>

<p>Page 58</p> <p>1 JAMES DONDERO</p> <p>2 to own million shares of that series hold at 20</p> <p>3 that now trade at 70.</p> <p>4 Q. And is NexPoint REIT affiliated with</p> <p>5 NexPoint Advisors, L.P.?</p> <p>6 A. Yes.</p> <p>7 Q. And do you have an understanding of</p> <p>8 the nature of the relationship?</p> <p>9 A. Yes.</p> <p>10 Q. And what's -- what's your</p> <p>11 understanding of the nature of the relationship</p> <p>12 between NexPoint REIT and NexPoint Advisors,</p> <p>13 L.P.?</p> <p>14 A. It's the external manager of the</p> <p>15 REIT.</p> <p>16 Q. Okay. Did you ever tell Nancy or</p> <p>17 Dugaboy that you had received these restricted</p> <p>18 stock units in 2016?</p> <p>19 A. No. But again, the vested amount</p> <p>20 would have probably been about \$250,000 worth</p> <p>21 at that moment.</p> <p>22 Q. And did it vest over a couple of</p> <p>23 years?</p> <p>24 A. The first couple of years is vested</p> <p>25 over five years. I think now it vests over six</p>	<p>Page 59</p> <p>1 JAMES DONDERO</p> <p>2 or seven years. I don't remember whether the</p> <p>3 2016 award was five years, six years, or seven</p> <p>4 years.</p> <p>5 Q. Okay. We talked earlier about an</p> <p>6 expert that's been retained on your behalf.</p> <p>7 Do you remember that?</p> <p>8 A. Yes.</p> <p>9 Q. Do you recall if you or anybody</p> <p>10 acting on your behalf ever disclosed to that</p> <p>11 expert the restricted stock units reflected on</p> <p>12 this document?</p> <p>13 MS. DEITSCH-PEREZ: Object to the</p> <p>14 form.</p> <p>15 THE WITNESS: I don't know.</p> <p>16 MR. MORRIS: Let's put up</p> <p>17 Exhibit 50, please.</p> <p>18 MS. CANTY: (Complies with request.)</p> <p>19 (Whereupon, Exhibit 50, James</p> <p>20 Dondero Compensation and Benefits</p> <p>21 Statement, Bates stamped D-CNL003587,</p> <p>22 marked for identification, as of this</p> <p>23 date.)</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. Do you see this is your benefits</p>
<p>Page 60</p> <p>1 JAMES DONDERO</p> <p>2 statement for 2017?</p> <p>3 A. Yes.</p> <p>4 Q. Did you ever disclose any of the</p> <p>5 information on this page to Nancy or to</p> <p>6 Dugaboy?</p> <p>7 A. No.</p> <p>8 Q. Did you ever disclose to Nancy or to</p> <p>9 Dugaboy that your base salary in 2017 was.</p> <p>10 2,500,024?</p> <p>11 MS. DEITSCH-PEREZ: Object to the</p> <p>12 form.</p> <p>13 THE WITNESS: Not specifically, no,</p> <p>14 other than the buckets we talked about</p> <p>15 earlier.</p> <p>16 Like I said earlier, I'm not sure if</p> <p>17 I have ever seen these before. But I also</p> <p>18 -- until it's verified, I don't want to --</p> <p>19 everybody to assume that the base salary</p> <p>20 came a hundred percent from Highland or if</p> <p>21 it was also from some other entity.</p> <p>22 Because for the purposes of this letter,</p> <p>23 Brian Collins wouldn't have -- we have</p> <p>24 numerous or several employees that are dual</p> <p>25 employees. And whether their base salary</p>	<p>Page 61</p> <p>1 JAMES DONDERO</p> <p>2 came from one or multiple entities, he</p> <p>3 wouldn't have differentiated in that line.</p> <p>4 So I don't know whether that amount,</p> <p>5 that 2.5 million came from Highland or a</p> <p>6 combination of Highland/NexPoint or some</p> <p>7 other entities. I don't know.</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. And who made the decision as to how</p> <p>10 to allocate the base salary?</p> <p>11 A. I don't know. I -- I mean, I don't</p> <p>12 know how it was split. But my recollection of</p> <p>13 my Highland base salary is that it was</p> <p>14 diminishing over time.</p> <p>15 Q. And -- and as the president of</p> <p>16 Highland and as the president of NexPoint, did</p> <p>17 you have any say as to how your salary was</p> <p>18 allocated between those two entities?</p> <p>19 A. Not that I recall.</p> <p>20 Q. Do you have any idea the basis on</p> <p>21 which your salary was allocated between those</p> <p>22 two entities?</p> <p>23 A. No.</p> <p>24 Q. Do you think -- do -- do you have</p> <p>25 any understanding that it was allocated based</p>

<p>Page 62</p> <p>1 JAMES DONDERO</p> <p>2 on the amount of time you spent working for</p> <p>3 each of those entities?</p> <p>4 A. I have no idea.</p> <p>5 Q. If your salary was \$500,000 from</p> <p>6 Highland in 2017 and \$2 million to NexPoint,</p> <p>7 can you – can you think of any reason why it</p> <p>8 would be allocated in that way?</p> <p>9 MS. DEITSCH-PEREZ: Object to the</p> <p>10 form.</p> <p>11 THE WITNESS: Cash, cash</p> <p>12 availability. I – I don't know.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. Okay. Did you devote your full time</p> <p>15 and attention to Highland Capital Management,</p> <p>16 L.P.?</p> <p>17 A. I spread my time as appropriate</p> <p>18 across a variety of entities.</p> <p>19 Q. Can you identify for me the entities</p> <p>20 that you spread your time across?</p> <p>21 A. Highland, NexPoint, HCMFA, HCRE.</p> <p>22 Q. How about Highland Management</p> <p>23 Services, Inc.?</p> <p>24 A. Yes.</p> <p>25 Q. Are there any others?</p>	<p>Page 63</p> <p>1 JAMES DONDERO</p> <p>2 A. Yes.</p> <p>3 Q. Can you identify any other companies</p> <p>4 to which you devoted your time and attention?</p> <p>5 A. Not off the top of my head. I'm</p> <p>6 willing to be refreshed. But over the years</p> <p>7 there's been multiple initiatives at Highland</p> <p>8 that have come and gone and private equity</p> <p>9 companies that have come and gone and other</p> <p>10 initiatives that have come and gone.</p> <p>11 Q. Do you see the reference to the</p> <p>12 65,772 restricted stock units of the NexPoint</p> <p>13 REIT there on this document?</p> <p>14 A. Yes.</p> <p>15 Q. And was that, to the best of your</p> <p>16 recollection, the award that you were granted</p> <p>17 in connection with your 2017 performance?</p> <p>18 A. It would have been for – it would</p> <p>19 have been the prior awards at – it would have</p> <p>20 been for the prior years' awards at NFLP. And</p> <p>21 it would have been – it would have been the</p> <p>22 same five- or seven-year vesting schedule.</p> <p>23 MR. MORRIS: Now I'm looking at my</p> <p>24 phone, and I don't see, Deborah, any e-mail</p> <p>25 from your firm.</p>
<p>Page 64</p> <p>1 JAMES DONDERO</p> <p>2 MS. DEITSCH-PEREZ: Yeah. On a</p> <p>3 break, I'll take a picture of it and send</p> <p>4 it to you.</p> <p>5 Do you want a break now?</p> <p>6 MR. MORRIS: I really – I really</p> <p>7 don't. And I don't know why I can't get an</p> <p>8 e-mail copy rather than a photograph. It's</p> <p>9 not going to be – it's not going to be</p> <p>10 easy to read, and you know that?</p> <p>11 MS. DEITSCH-PEREZ: It'll be</p> <p>12 perfectly fine. If you can't, let me know;</p> <p>13 and then I'll take the time to try and find</p> <p>14 it. But the fastest way to get it to you</p> <p>15 is to take a picture of it.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. Mr. Dondero, did you ever tell Nancy</p> <p>18 or Dugaboy that you had received the restricted</p> <p>19 stock units from the NexPoint REIT as reflected</p> <p>20 on this page?</p> <p>21 A. You're – you're saying the</p> <p>22 \$1.55-million number that was really 200,000</p> <p>23 vested or 300,000 vested?</p> <p>24 Q. No. I'm not talking about the</p> <p>25 value. I'm just talking about the restricted</p>	<p>Page 65</p> <p>1 JAMES DONDERO</p> <p>2 units.</p> <p>3 Did you ever tell them – let's keep</p> <p>4 it – let's keep it simple, and let's make it</p> <p>5 really broad.</p> <p>6 Did you ever tell Nancy or Dugaboy</p> <p>7 that you received restricted stock units as</p> <p>8 part of your compensation?</p> <p>9 A. I – I don't remember.</p> <p>10 Q. Okay. Did you ever – because this</p> <p>11 will speed it up.</p> <p>12 Did you ever tell your expert that</p> <p>13 you received restricted stock units as part of</p> <p>14 your compensation?</p> <p>15 MS. DEITSCH-PEREZ: Object to the</p> <p>16 form.</p> <p>17 THE WITNESS: I don't – I don't</p> <p>18 remember.</p> <p>19 BY MR. MORRIS:</p> <p>20 Q. Did you ever direct anyone acting on</p> <p>21 your behalf to share with your expert that you</p> <p>22 had received restricted stock units as a form</p> <p>23 of compensation?</p> <p>24 MS. DEITSCH-PEREZ: Object to the</p> <p>25 form.</p>

<p>Page 66</p> <p>1 JAMES DONDERO</p> <p>2 THE WITNESS: I not – I wasn't</p> <p>3 involved.</p> <p>4 MR. MORRIS: All right. You know,</p> <p>5 what, Deborah, let's take a break; and why</p> <p>6 don't you send me that document.</p> <p>7 It is now 3:28. Let's come back at</p> <p>8 3:40 Eastern, and let's please be on time</p> <p>9 because I'd like to try to finish this</p> <p>10 today. Thank you.</p> <p>11 THE VIDEOGRAPHER: Off the record at</p> <p>12 2:28.</p> <p>13 (Whereupon, a break was taken.)</p> <p>14 THE VIDEOGRAPHER: We are back on</p> <p>15 the record. The time is 2:43.</p> <p>16 MR. MORRIS: I received from counsel</p> <p>17 a photograph in text message form of the</p> <p>18 document that Mr. Dondero was referring to</p> <p>19 at the beginning of the deposition.</p> <p>20 I'm going to ask for that production</p> <p>21 – for the production of that document with</p> <p>22 a Bates number by the end of the day, and I</p> <p>23 hope that could be accommodated.</p> <p>24 MS. DEITSCH-PEREZ: I'm not sure –</p> <p>25 John, I'm not sure it will be by the end of</p>	<p>Page 67</p> <p>1 JAMES DONDERO</p> <p>2 the day because I don't know when the</p> <p>3 people who do the Bates stamping leave.</p> <p>4 But if it's not today, it will be tomorrow.</p> <p>5 MR. MORRIS: All right. It's 2:44</p> <p>6 in the afternoon your time. I hope that</p> <p>7 your firm has the capability of Bates</p> <p>8 stamping and producing one page before the</p> <p>9 close of business.</p> <p>10 MS. DEITSCH-PEREZ: Okay. But I'm</p> <p>11 not going to get – John, what difference</p> <p>12 does it make whether it's tonight or</p> <p>13 tomorrow?</p> <p>14 MR. MORRIS: You know what, I really</p> <p>15 want to use it in the deposition now, but I</p> <p>16 can't do that because – because you're not</p> <p>17 able – because you – because apparently,</p> <p>18 you can't even promise to do it by the end</p> <p>19 of the day.</p> <p>20 BY MR. MORRIS:</p> <p>21 Q. Mr. Dondero –</p> <p>22 MS. DEITSCH-PEREZ: Could you –</p> <p>23 could you use it –</p> <p>24 MR. MORRIS: I'd like to –</p> <p>25 MS. DEITSCH-PEREZ: – if I sent it</p>
<p>Page 68</p> <p>1 JAMES DONDERO</p> <p>2 to you by e-mail instead.</p> <p>3 MR. MORRIS: I'd like to proceed.</p> <p>4 You can e-mail it to me. I mean, I</p> <p>5 asked you to do that an hour ago.</p> <p>6 MS. DEITSCH-PEREZ: Well, the</p> <p>7 easiest way to do it is to send a picture</p> <p>8 is to text it; but if you give me a minute,</p> <p>9 I'll figure out how to send it by e-mail.</p> <p>10 Give me a second. Let's see.</p> <p>11 It just takes a second because it</p> <p>12 goes into my personal e-mail first if it's</p> <p>13 from my iPhone. Okay.</p> <p>14 MR. MORRIS: Can we proceed?</p> <p>15 MS. DEITSCH-PEREZ: Yeah. Give me a</p> <p>16 minute and you'll have it.</p> <p>17 Okay. You should have it in your</p> <p>18 e-mail now, John.</p> <p>19 MR. MORRIS: Thank you. All right.</p> <p>20 I'll let you know when it arrives.</p> <p>21 BY MR. MORRIS:</p> <p>22 Q. Mr. Dondero, the questions now are</p> <p>23 going to be both in your individual capacity</p> <p>24 and in your capacity as the 30(b)(6) witness.</p> <p>25 Do you understand that?</p>	<p>Page 69</p> <p>1 JAMES DONDERO</p> <p>2 A. Okay.</p> <p>3 Q. Okay.</p> <p>4 A. It's either – it's either/or; it's</p> <p>5 not one?</p> <p>6 Q. No.</p> <p>7 A. Okay.</p> <p>8 Q. You contend that the Notes are</p> <p>9 subject to the – withdrawn.</p> <p>10 You contend that the Notes that are</p> <p>11 the subject of the agreements would be forgiven</p> <p>12 upon the fulfillment of certain conditions</p> <p>13 present, right?</p> <p>14 A. Right.</p> <p>15 MS. DEITSCH-PEREZ: Object to the</p> <p>16 form. He said "subsequent."</p> <p>17 MR. MORRIS: I apologize. Let me</p> <p>18 restate the question.</p> <p>19 BY MR. MORRIS:</p> <p>20 Q. You contend that the Notes subject</p> <p>21 to the agreement should be forgiven or would be</p> <p>22 forgiven upon the fulfillment of certain</p> <p>23 conditions subsequent, correct?</p> <p>24 A. Yes.</p> <p>25 Q. And to the best of your knowledge,</p>

<p>Page 70</p> <p>1 JAMES DONDERO</p> <p>2 none of those conditions have occurred as of</p> <p>3 today, correct?</p> <p>4 A. To the best of my knowledge, yes.</p> <p>5 Q. Okay. You're not aware of any facts</p> <p>6 showing that any of the conditions subsequent</p> <p>7 have been satisfied, fair?</p> <p>8 A. I – yeah. I wouldn't know. You</p> <p>9 would probably know. I don't know.</p> <p>10 Q. I'm only asking for your knowledge.</p> <p>11 One of the conditions subsequent was</p> <p>12 that the Notes would be forgiven if you caused</p> <p>13 Highland to sell its interest in one of three</p> <p>14 portfolio companies above cost, right?</p> <p>15 MS. DEITSCH-PEREZ: Object to the</p> <p>16 form.</p> <p>17 THE WITNESS: I – yeah. I don't</p> <p>18 know if the noun is me or Highland, but</p> <p>19 yeah.</p> <p>20 BY MR. MORRIS:</p> <p>21 Q. Okay. The portfolio companies at</p> <p>22 issue were MGM, Comerstone, and Trustway,</p> <p>23 correct?</p> <p>24 A. Yes.</p> <p>25 Q. And prior to the petition date, you</p>	<p>Page 71</p> <p>1 JAMES DONDERO</p> <p>2 had the authority to sell any of those</p> <p>3 portfolio companies at any time without having</p> <p>4 to obtain approval from anyone, correct?</p> <p>5 MS. DEITSCH-PEREZ: Object to the</p> <p>6 form.</p> <p>7 THE WITNESS: Yeah. No, I can't</p> <p>8 agree with that statement.</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. Why not?</p> <p>11 Who's approval did you have to get</p> <p>12 before you could sell any of those portfolio</p> <p>13 companies?</p> <p>14 A. MGM, I was one board member and I</p> <p>15 think an aggregate. When I was running</p> <p>16 Highland, we spoke for 18 percent of the</p> <p>17 equity. So I couldn't force the overall sale</p> <p>18 of the company unilaterally.</p> <p>19 There was also a shareholder's</p> <p>20 agreement in place that restricted myself and</p> <p>21 Anchorage and a couple of the large holders</p> <p>22 from selling their shares without a disclosure</p> <p>23 and approval process. That is one example.</p> <p>24 With regard to Trustway, I believe I</p> <p>25 was largely unfettered.</p>
<p>Page 72</p> <p>1 JAMES DONDERO</p> <p>2 With regard to Comerstone, a</p> <p>3 majority of it – or not a majority, but a</p> <p>4 significant minority, I think, was owned by</p> <p>5 both Restoration and the Old Redeemer Fund.</p> <p>6 Q. All right. Well, let me ask you</p> <p>7 this: The conditions subsequent that are</p> <p>8 embedded in the agreements, did that relate to</p> <p>9 just Highland's interests in the portfolio</p> <p>10 companies, or did it relate to interests held</p> <p>11 by anybody else?</p> <p>12 A. It referred to a monetization in</p> <p>13 creating liquidity around Highland's interests</p> <p>14 that were large and illiquid portions of</p> <p>15 Highland's balance sheet.</p> <p>16 Q. Okay. So let me ask the question</p> <p>17 again.</p> <p>18 Prior to the petition date, did you</p> <p>19 have the authority to sell Highland's interests</p> <p>20 in any of the portfolio companies without</p> <p>21 having to obtain the authority of anybody else?</p> <p>22 MS. DEITSCH-PEREZ: Object to the</p> <p>23 form. Asked and answered.</p> <p>24 THE WITNESS: Sub- – subject to my</p> <p>25 prior answer, I could speak for Highland</p>	<p>Page 73</p> <p>1 JAMES DONDERO</p> <p>2 prior to the bankruptcy.</p> <p>3 BY MR. MORRIS:</p> <p>4 Q. Okay. Before entering into the</p> <p>5 agreements, did you or anybody acting on your</p> <p>6 behalf analyze the likelihood that any of the</p> <p>7 conditions subsequent would occur?</p> <p>8 A. Likelihood? Analyze? My</p> <p>9 description of them, which was my understanding</p> <p>10 of them, but my description of the assets to my</p> <p>11 sister was – to the trustee of Dugaboy was</p> <p>12 that we held them for a long time. We were</p> <p>13 working towards monetization, but there wasn't</p> <p>14 anything imminent regarding any of them in 2017</p> <p>15 or '18.</p> <p>16 Q. Well, but the actual sale is just</p> <p>17 one part of the condition subsequent, correct?</p> <p>18 The other part is that it's got to</p> <p>19 be sold above cost; is that correct?</p> <p>20 A. That is right.</p> <p>21 Q. Okay. So at the time you entered</p> <p>22 into each of your – each of the three</p> <p>23 agreements, had you done any analysis to</p> <p>24 determine whether or not any – whether</p> <p>25 Highland's interests in any of the portfolio</p>

<p>Page 74</p> <p>1 JAMES DONDERO</p> <p>2 companies exceeded its cost?</p> <p>3 A. No, but I – yes. No, I did not.</p> <p>4 Q. Did you have any understanding at</p> <p>5 all as to how the value of Highland's interests</p> <p>6 in MGM compared to its costs at the time you</p> <p>7 entered into each of these three agreements?</p> <p>8 A. No. I mean, my understanding was I</p> <p>9 knew they were substantially higher, but I</p> <p>10 didn't know how much higher.</p> <p>11 Q. Okay. So is it fair to say that the</p> <p>12 time – at the time you entered into each of</p> <p>13 these agreements, you knew and understood that</p> <p>14 the value of Highland's interests in MGM was</p> <p>15 substantially higher than its costs?</p> <p>16 A. For MGM, yes.</p> <p>17 Q. Okay. Did you have an understanding</p> <p>18 of the relationship between value and costs</p> <p>19 concerning Cornerstone at the time you entered</p> <p>20 into these agreements?</p> <p>21 A. My understanding it was moderately</p> <p>22 higher, and Trustway was between substantially</p> <p>23 and moderately and higher, I believe.</p> <p>24 Q. Okay. So is it fair to say that at</p> <p>25 the time you entered into each of these</p>	<p>Page 75</p> <p>1 JAMES DONDERO</p> <p>2 agreements, you believed that the value of</p> <p>3 Highland's interests in each of the portfolio</p> <p>4 companies exceeded its costs in varying</p> <p>5 degrees?</p> <p>6 A. Varying degrees. As a matter of</p> <p>7 fact, I would adjust. Cornerstone and</p> <p>8 Trustway, I believe, were moderately higher</p> <p>9 than their embedded costs or implied costs.</p> <p>10 That was my understanding.</p> <p>11 MGM was somewhat substantially. But</p> <p>12 all of them with a fair amount of volatility</p> <p>13 and a fair amount of illiquidity.</p> <p>14 Q. Did you ever give your sister or</p> <p>15 Dugaboy any information concerning how the</p> <p>16 value of Highland's interests in any of the</p> <p>17 portfolio companies compared to Highland's</p> <p>18 costs before entering into the agreements?</p> <p>19 A. Not that I recall.</p> <p>20 Q. Do you have any reason to believe</p> <p>21 that your sister or Dugaboy had any</p> <p>22 understanding as to the likelihood that the</p> <p>23 conditions subsequent would be satisfied at the</p> <p>24 time the Dugaboy trustee entered into the three</p> <p>25 agreements with you?</p>
<p>Page 76</p> <p>1 JAMES DONDERO</p> <p>2 MS. DEITSCH-PEREZ: Object to the</p> <p>3 form.</p> <p>4 THE WITNESS: I – I remember saying</p> <p>5 it would take a few years at minimum; but</p> <p>6 other than expressing time, I don't believe</p> <p>7 I expressed value versus cost or the</p> <p>8 questions you were asking me previously.</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. Okay. You never showed Nancy or</p> <p>11 Dugaboy any of the Promissory Notes prior to</p> <p>12 entering into any of the agreements, correct?</p> <p>13 A. Not that I recall.</p> <p>14 Q. And you never sent copies of the</p> <p>15 Promissory Notes to Nancy or Dugaboy before</p> <p>16 entering into any of these agreements, correct?</p> <p>17 A. Not that I recall.</p> <p>18 MS. DEITSCH-PEREZ: Object to the</p> <p>19 form.</p> <p>20 John, you've asked these at the last</p> <p>21 deposition and actually also at the first</p> <p>22 day of the deposition.</p> <p>23 MR. MORRIS: Thank you. He's here</p> <p>24 now in his 30(b)(6) capacity. So please</p> <p>25 just stop.</p>	<p>Page 77</p> <p>1 JAMES DONDERO</p> <p>2 You can object to the form of the</p> <p>3 question. I really don't appreciate it.</p> <p>4 You should follow the very professional job</p> <p>5 that your colleague, Michael Aigen, did the</p> <p>6 other day.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. Neither Nancy or Dugaboy has ever</p> <p>9 asked to see copies of any of the Promissory</p> <p>10 Notes before entering into any of the</p> <p>11 agreements, correct?</p> <p>12 MS. DEITSCH-PEREZ: Object to the</p> <p>13 form.</p> <p>14 THE WITNESS: I don't know.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. Do you have any reason to believe</p> <p>17 that Nancy or Dugaboy ever saw a copy of any of</p> <p>18 the Promissory Notes at issue before entering</p> <p>19 into the agreements?</p> <p>20 A. I don't know.</p> <p>21 Q. During your discussions with Nancy</p> <p>22 and Dugaboy, did you identify the Promissory</p> <p>23 Notes that were going to be the subject of each</p> <p>24 agreement?</p> <p>25 MS. DEITSCH-PEREZ: Object to the</p>

<p>Page 78</p> <p>1 JAMES DONDERO</p> <p>2 form.</p> <p>3 You know, we made an agreement that</p> <p>4 you were going to refer to Nancy as the</p> <p>5 Dugaboy trustee. Please stick to it.</p> <p>6 Otherwise, I'm going to have to object each</p> <p>7 time, and I'd rather not.</p> <p>8 MR. MORRIS: I have no problem with</p> <p>9 your objecting to the form of the question.</p> <p>10 It's the speaking that I really do object</p> <p>11 to. And I don't know why you can't control</p> <p>12 yourself.</p> <p>13 MS. DEITSCH-PEREZ: Because I</p> <p>14 hope that –</p> <p>15 MR. MORRIS: Please stop. Please</p> <p>16 stop.</p> <p>17 MS. DEITSCH-PEREZ: – by telling</p> <p>18 you this, you will listen.</p> <p>19 MR. MORRIS: Okay. Your discussion</p> <p>20 and your inability to control yourself is</p> <p>21 going to cause this deposition to go longer</p> <p>22 than it needs to, okay?</p> <p>23 MS. DEITSCH-PEREZ: No. It's your</p> <p>24 repeating questions that's going to do</p> <p>25 that.</p>	<p>Page 79</p> <p>1 JAMES DONDERO</p> <p>2 MR. MORRIS: You let me know when</p> <p>3 you're done.</p> <p>4 MS. DEITSCH-PEREZ: I'm done.</p> <p>5 BY MR. MORRIS:</p> <p>6 Q. Mr. Dondero, during your discussions</p> <p>7 with the Dugaboy trustee, did you identify the</p> <p>8 Promissory Notes that were going to be the</p> <p>9 subject of each agreement?</p> <p>10 MS. DEITSCH-PEREZ: Object to the</p> <p>11 form.</p> <p>12 THE WITNESS: No, not that I recall.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. Do you recall – during your</p> <p>15 discussions with the Dugaboy trustee, did you</p> <p>16 identify the maker of any of the Notes that</p> <p>17 were the subject of any of the agreements?</p> <p>18 A. You mean Highland as the maker; is</p> <p>19 that what you're saying?</p> <p>20 Q. No. I'm just asking if during your</p> <p>21 discussions with the Dugaboy trustee, you ever</p> <p>22 disclosed the name of the maker of any of the</p> <p>23 Notes that were subject to the agreements?</p> <p>24 A. She – she knew they were Notes due</p> <p>25 to Highland from various entities. So I don't</p>
<p>Page 80</p> <p>1 JAMES DONDERO</p> <p>2 know what your question is. Did I identify</p> <p>3 specifically that they were Notes due to</p> <p>4 Highland? I guess the answer to that is yes,</p> <p>5 but I don't know what you're asking me.</p> <p>6 Q. I'm sorry, sir. I'll take the</p> <p>7 responsibility for that.</p> <p>8 I'm asking you if you identified who</p> <p>9 the maker of the Notes were, not who the payee</p> <p>10 was.</p> <p>11 MS. DEITSCH-PEREZ: You mean the</p> <p>12 borrowers, John?</p> <p>13 THE WITNESS: See, I don't want to</p> <p>14 get stuck in my underwear on maker/borrower</p> <p>15 nomenclature.</p> <p>16 She was aware that they were notes</p> <p>17 due to Highland from a variety of entities.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. Okay. Did you identify any of those</p> <p>20 entities?</p> <p>21 A. I – yeah. She knew that some were</p> <p>22 Dugaboy, some were NexPoint for sure, and some</p> <p>23 were other entities.</p> <p>24 Q. So – so there were notes where</p> <p>25 Dugaboy owed the money or was the obligor or</p>	<p>Page 81</p> <p>1 JAMES DONDERO</p> <p>2 was the borrower or was the maker that are</p> <p>3 subject to agreements that you entered into</p> <p>4 with the Dugaboy trustee?</p> <p>5 A. No. Wait. The Dugaboy – the</p> <p>6 Dugaboy Notes weren't subject to the</p> <p>7 forgiveness. It was the other notes that were</p> <p>8 subject to forgiveness.</p> <p>9 Q. So it's really kind of a simple</p> <p>10 question, and I'm not trying to trick you.</p> <p>11 If you think back to the</p> <p>12 conversations that you had with the Dugaboy</p> <p>13 trustee, did you identify the entity of – did</p> <p>14 you identify who the borrowers were under the</p> <p>15 Notes that were going to be subject to the</p> <p>16 agreements?</p> <p>17 A. She knew they were entities – she</p> <p>18 knew there were other related entities. She</p> <p>19 knew NexPoint for sure. She knew Services.</p> <p>20 I can't sit here as I remember – as</p> <p>21 I sit here today and remember whether or not I</p> <p>22 specifically identified HCRE or not, you know;</p> <p>23 but she knew they were related entities.</p> <p>24 Q. All of the revisions of the</p> <p>25 agreement are set forth in paragraph 82; is</p>

<p>Page 82</p> <p>1 JAMES DONDERO</p> <p>2 that right?</p> <p>3 We could put it back up on the</p> <p>4 screen if you'd like.</p> <p>5 MR. MORRIS: In fact, why don't we</p> <p>6 do that.</p> <p>7 MS. CANTY: I'm sorry, John. 51 –</p> <p>8 I mean, 50?</p> <p>9 MR. MORRIS: I think it's</p> <p>10 Exhibit 31, paragraph 82.</p> <p>11 MS. CANTY: Oh, okay, 82. I've got</p> <p>12 you.</p> <p>13 MR. MORRIS: Thank you.</p> <p>14 BY MR. MORRIS:</p> <p>15 Q. Does – Mr. Dondero, other than</p> <p>16 specifying who the portfolio companies were,</p> <p>17 does paragraph 82 set forth all of the material</p> <p>18 terms of each of the agreements?</p> <p>19 A. I think it sets forth the conditions</p> <p>20 subsequent.</p> <p>21 Q. Is there any aspect of your</p> <p>22 agreement – withdrawn.</p> <p>23 Is there any aspect of your</p> <p>24 agreements with the Dugaboy trustees that's not</p> <p>25 described in this paragraph?</p>	<p>Page 83</p> <p>1 JAMES DONDERO</p> <p>2 A. I don't know if it's captured in</p> <p>3 there, but there was definitely a conversation,</p> <p>4 discussion that if something like MGM was</p> <p>5 sold – Anchorage is the largest holder almost</p> <p>6 a majority in and of themselves. And if it was</p> <p>7 bought or taken out at a price that we couldn't</p> <p>8 control or couldn't agree with and it was lower</p> <p>9 than cost or – you know, Cornerstone, again,</p> <p>10 had multiple funds between our ownership and</p> <p>11 control that if – if things were sold</p> <p>12 beyond – without my support but sold below</p> <p>13 cost – and I'm not sure that's captured in</p> <p>14 that paragraph, but I think that was part of</p> <p>15 the understanding, also.</p> <p>16 Q. Is there any other part of the</p> <p>17 understanding that's not set forth in</p> <p>18 paragraph 82, Mr. Dondero?</p> <p>19 A. Not that I can think of at this –</p> <p>20 let me read it one more time, please.</p> <p>21 Q. Take your time.</p> <p>22 A. I believe that generally covers it.</p> <p>23 Q. Was any provision of the agreements</p> <p>24 the subject of negotiation?</p> <p>25 MS. DEITSCH-PEREZ: Object to the</p>
<p>Page 84</p> <p>1 JAMES DONDERO</p> <p>2 form.</p> <p>3 THE WITNESS: I don't believe it was</p> <p>4 materially adjusted by any negotiation. It</p> <p>5 was just clarified based on discussion is</p> <p>6 how I would describe it.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. Is there any provision in the</p> <p>9 agreements that was included at your sis- – at</p> <p>10 the Dugaboy trustee's request?</p> <p>11 A. Like I said, there was discussion</p> <p>12 and clarification. Not specifically that I</p> <p>13 recall.</p> <p>14 Q. Okay. Did the Dugaboy trustee</p> <p>15 refuse to include any provision in the</p> <p>16 agreement that you had proposed?</p> <p>17 A. Not that I recall.</p> <p>18 Q. Can you identify any provision of</p> <p>19 the agreements that were the subject of a</p> <p>20 counterproposal that the Dugaboy trustee made?</p> <p>21 A. I remember clarification discussion</p> <p>22 around, you know, three companies versus two or</p> <p>23 one. I remember clarification of monetization</p> <p>24 being turned to cash versus illiquid.</p> <p>25 Yeah. I mean, I remember</p>	<p>Page 85</p> <p>1 JAMES DONDERO</p> <p>2 discussion – I remember clarification</p> <p>3 discussions like that, but I don't remember –</p> <p>4 it was a long time ago. I don't remember the</p> <p>5 details of anything specific like that.</p> <p>6 It wasn't – it wasn't a</p> <p>7 contentious, nor should it have been a</p> <p>8 contentious negotiation.</p> <p>9 Q. How long did – do you recall how</p> <p>10 long each of the conversations lasted that led</p> <p>11 to the entry of each of the three agreements?</p> <p>12 A. I remember the first one being</p> <p>13 longer than the second two, and then I remember</p> <p>14 it being spread out periods of time. So I</p> <p>15 can't – I can't – I can't put an exact</p> <p>16 estimate on it.</p> <p>17 Q. Okay. I'm going to shift gears.</p> <p>18 MR. MORRIS: We can take that down</p> <p>19 now, please.</p> <p>20 MS. CANTY: (Complies with request.)</p> <p>21 BY MR. MORRIS:</p> <p>22 Q. Do you know of any written agreement</p> <p>23 pursuant to which HCRE provided services to</p> <p>24 Highland at any time?</p> <p>25 MS. DEITSCH-PEREZ: Object to the</p>

<p>Page 86</p> <p>1 JAMES DONDERO</p> <p>2 form. Asked and answered.</p> <p>3 THE WITNESS: HCRE provided</p> <p>4 preferred services to. Well, the</p> <p>5 participants there in HCRE are, my –</p> <p>6 myself and McGraner. And, you know, we</p> <p>7 both provided significant other services to</p> <p>8 Highland.</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. Okay. Is that in writing? Is there</p> <p>11 a written agreement?</p> <p>12 That was my question.</p> <p>13 Is there a written agreement</p> <p>14 pursuant to which HCRE ever provided services</p> <p>15 to Highland?</p> <p>16 A. I don't believe so.</p> <p>17 Q. Did HCRE ever provide services to</p> <p>18 Highland?</p> <p>19 A. I would incorporate my last two</p> <p>20 answers. Not under a written agreement, but I</p> <p>21 believe myself and McGraner provided a lot of</p> <p>22 services.</p> <p>23 Q. And what services did you and Mr.</p> <p>24 McGraner provide to Highland?</p> <p>25 A. I'd say anything real estate related</p>	<p>Page 87</p> <p>1 JAMES DONDERO</p> <p>2 on the Highland platform McGraner would have</p> <p>3 input into.</p> <p>4 And then I think my – my portfolio</p> <p>5 management, leadership role in Highland over</p> <p>6 time is well documented.</p> <p>7 Q. And how did you know if you were</p> <p>8 providing services in your capacity as the</p> <p>9 president of Highland or in your capacity as an</p> <p>10 officer or owner of the HCRE at the time you</p> <p>11 provided the services?</p> <p>12 A. Never – never really thought about</p> <p>13 parsing it that way.</p> <p>14 Q. I appreciate that.</p> <p>15 Do you know whether Highland Capital</p> <p>16 Management Services ever provided services to</p> <p>17 Highland?</p> <p>18 A. Yeah.</p> <p>19 MS. DEITSCH-PEREZ: Object to the</p> <p>20 form. Asked and answered.</p> <p>21 THE WITNESS: Yeah. I would – not</p> <p>22 in writing. I believe the services owners</p> <p>23 isn't myself and McGraner. I think it was</p> <p>24 myself and Okada.</p> <p>25 And I would say our portfolio and</p>
<p>Page 88</p> <p>1 JAMES DONDERO</p> <p>2 leadership contributions to Highland are</p> <p>3 well documented.</p> <p>4 BY MR. MORRIS:</p> <p>5 Q. And my question didn't have anything</p> <p>6 to do with any particular person. It's just</p> <p>7 simply whether Highland Capital Management</p> <p>8 Services ever provided any services to Highland</p> <p>9 Capital Management, L.P.</p> <p>10 MS. DEITSCH-PEREZ: Object to the</p> <p>11 form.</p> <p>12 THE WITNESS: The entities that</p> <p>13 you're describing or you're asking</p> <p>14 questions about don't have employees'</p> <p>15 services in HCRE. They have ownership</p> <p>16 individuals that I've described.</p> <p>17 So I've tried the best I can to</p> <p>18 answer your question and what the ownership</p> <p>19 may have done for Highland.</p> <p>20 But since there's no employee base</p> <p>21 at either of those two companies, those</p> <p>22 companies could not have directly provided</p> <p>23 service to Highland other than, the last</p> <p>24 thing I would bring up is the track-record</p> <p>25 concept, you know, in terms of the</p>	<p>Page 89</p> <p>1 JAMES DONDERO</p> <p>2 performance of whatever assets are in some</p> <p>3 of those start-up entities ends up being a</p> <p>4 useful track record that then Highland can</p> <p>5 market.</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. Okay. How about NexPoint, did</p> <p>8 NexPoint ever provide services to Highland</p> <p>9 Capital Management, L.P.?</p> <p>10 A. Yes. The real estate – yes. I</p> <p>11 mean, can I just say yes or –</p> <p>12 Q. You could. That would be really</p> <p>13 helpful.</p> <p>14 A. Okay. There we go.</p> <p>15 Q. Can you describe the circumstances</p> <p>16 for me?</p> <p>17 MS. DEITSCH-PEREZ: Finally, some</p> <p>18 accord between the witness and the</p> <p>19 questioner.</p> <p>20 BY MR. MORRIS:</p> <p>21 Q. Can you describe the services for</p> <p>22 me?</p> <p>23 A. NexPoint has a couple of attorneys</p> <p>24 that are real estate experts. We have a lot of</p> <p>25 different attorneys, or we did at Highland.</p>

<p>Page 90</p> <p>1 JAMES DONDERO</p> <p>2 But prior to the bankruptcy, none of the</p> <p>3 Highland attorneys were experienced in real</p> <p>4 estate.</p> <p>5 So anything that required</p> <p>6 transaction help on the Highland platform</p> <p>7 regarding real estate, the NexPoint real estate</p> <p>8 attorneys would help with.</p> <p>9 Q. Okay. Anything else?</p> <p>10 A. I'm sure there are others. That's</p> <p>11 all I can think of off the top of my head. I</p> <p>12 just wanted to give you an example.</p> <p>13 Q. I appreciate that.</p> <p>14 You're aware that Highland has sued</p> <p>15 HCMFA to collect on two notes that were signed</p> <p>16 by Frank Waterhouse in 2019 in the aggregate</p> <p>17 amount of \$7.4 million; is that right?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And we actually went through</p> <p>20 this the other day, so I don't want to belabor</p> <p>21 it if I don't have.</p> <p>22 But do you recall that we saw the</p> <p>23 incumbency certificate which identified</p> <p>24 Mr. Waterhouse as the treasurer of HCMFA as of</p> <p>25 April 2019?</p>	<p>Page 91</p> <p>1 JAMES DONDERO</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And do you recall that you</p> <p>4 signed that incumbency certify in your capacity</p> <p>5 as president of HCMFA?</p> <p>6 MS. DEITSCH-PEREZ: Object to the</p> <p>7 form.</p> <p>8 THE WITNESS: Yes.</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. I want to talk about the first of</p> <p>11 the two Notes, the \$2.4 million Note.</p> <p>12 Do you recall that in early May</p> <p>13 2019, Highland transferred \$2.4 million to</p> <p>14 HCMFA?</p> <p>15 A. I don't remember a lot of specifics,</p> <p>16 but I know there were two Notes as you're</p> <p>17 describing.</p> <p>18 Q. Okay. And there was -- and one of</p> <p>19 them -- did you authorize the \$2.4-million</p> <p>20 payment?</p> <p>21 A. Yes.</p> <p>22 Q. And why did you authorize Highland</p> <p>23 to transfer \$2.4 million to HCMFA in early May</p> <p>24 2019?</p> <p>25 A. My answer's the same for both --</p>
<p>Page 92</p> <p>1 JAMES DONDERO</p> <p>2 both Notes. Essentially, it's regarding the</p> <p>3 terrace start issue that we had with the</p> <p>4 Fort Worth SEC.</p> <p>5 Q. Did you give anyone instructions</p> <p>6 concerning the transfer of the \$2.4 million?</p> <p>7 A. I instructed them to make the</p> <p>8 transfer, or I was involved in the -- involved</p> <p>9 in approving the transfer.</p> <p>10 Q. And who did you instruct to make the</p> <p>11 transfer of \$2.4 million?</p> <p>12 A. Yeah. It would have been Frank.</p> <p>13 Q. Do you have a recollection of</p> <p>14 instructing Frank to transfer \$2.4 million?</p> <p>15 A. Yeah. Generally, yes.</p> <p>16 Q. Do you have a recollection of what</p> <p>17 instructions you gave him?</p> <p>18 A. It was well-known. It was a very</p> <p>19 disruptive -- the whole thing was very</p> <p>20 disruptive at Highland and HCMFA. Everybody</p> <p>21 was aware of it. The settlement, the</p> <p>22 negotiations around the settlement, the</p> <p>23 give-and-take, the amounts changed over time.</p> <p>24 Everybody was aware of it in senior</p> <p>25 management, including myself. And putting the</p>	<p>Page 93</p> <p>1 JAMES DONDERO</p> <p>2 money into HCMFA to settle it was something I</p> <p>3 was aware of and authorized and a critical</p> <p>4 piece of putting that issue to bed.</p> <p>5 Q. Okay. I'm just asking you if you</p> <p>6 recall what instructions you gave to</p> <p>7 Mr. Waterhouse concerning the transfer if you</p> <p>8 recall?</p> <p>9 A. No. I mean, like I said, I</p> <p>10 authorized the movement of the money.</p> <p>11 Q. Okay. Were you aware at that time</p> <p>12 that the transfer of the \$2.4 million from</p> <p>13 Highland to HCMFA was booked as a loan on both</p> <p>14 Highland and HCMFA's books and records?</p> <p>15 A. I was not aware at the time.</p> <p>16 Q. Okay.</p> <p>17 MR. MORRIS: Can we put up</p> <p>18 Exhibit 53 please.</p> <p>19 THE VIDEOGRAPHER: Counsel, I will</p> <p>20 need a media break in about five minutes.</p> <p>21 MR. MORRIS: Thank you very much.</p> <p>22 Why don't we take that right now before I</p> <p>23 begin my examination on this document. How</p> <p>24 long do you need?</p> <p>25 THE VIDEOGRAPHER: It will just be a</p>

<p>Page 94</p> <p>1 JAMES DONDERO</p> <p>2 minute, but this is the end of Media Number</p> <p>3 1.</p> <p>4 MR. MORRIS: Okay.</p> <p>5 THE VIDEOGRAPHER: We are off the</p> <p>6 record at 3:21.</p> <p>7 MR. MORRIS: We are off the record,</p> <p>8 but don't go anywhere.</p> <p>9 MS. DEITSCH-PEREZ: What?</p> <p>10 MR. MORRIS: We're not taking a</p> <p>11 break.</p> <p>12 THE VIDEOGRAPHER: Yep. This will</p> <p>13 just take a minute. Please stand by.</p> <p>14 MR. MORRIS: Thank you.</p> <p>15 THE VIDEOGRAPHER: All right.</p> <p>16 Suzanne, are you good to go?</p> <p>17 THE COURT REPORTER: I'm good.</p> <p>18 THE VIDEOGRAPHER: This is the</p> <p>19 beginning of Media Number 2, Volume II</p> <p>20 [sic] in the deposition of James Dondero.</p> <p>21 We are back on the record at 3:22.</p> <p>22 MR. MORRIS: All right. Can we</p> <p>23 please put up Exhibit 53.</p> <p>24 MS. CANTY: Yeah. Just one second.</p> <p>25 My computer went haywire. Give me one</p>	<p>Page 95</p> <p>1 JAMES DONDERO</p> <p>2 minute.</p> <p>3 (Whereupon, Exhibit 53, E-mail</p> <p>4 correspondence, Bates stamped D-CNL003768</p> <p>5 through D-CNL003770, marked for</p> <p>6 identification, as of this date.)</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. Okay. So Mr. Dondero, do you see</p> <p>9 what's on the screen here?</p> <p>10 Mr. Dondero?</p> <p>11 MR. MORRIS: Deborah?</p> <p>12 Apparently Mr. Dondero has left the</p> <p>13 seat.</p> <p>14 THE VIDEOGRAPHER: Would you like to</p> <p>15 go off record?</p> <p>16 MR. MORRIS: No.</p> <p>17 THE VIDEOGRAPHER: Okay. We'll stay</p> <p>18 on the record.</p> <p>19 MR. MORRIS: The video is still</p> <p>20 rolling, right, sir?</p> <p>21 THE VIDEOGRAPHER: Yes, it is.</p> <p>22 MR. MORRIS: Thank you.</p> <p>23 Hi, Michael. If you're – if you're</p> <p>24 able, can you reach out to your partner?</p> <p>25 MR. AIGEN: I had texted her. I</p>
<p>Page 96</p> <p>1 JAMES DONDERO</p> <p>2 will try to call her, too; but I did text</p> <p>3 her a couple of minutes ago. I will try to</p> <p>4 reach out again. Hold on.</p> <p>5 MS. DEITSCH-PEREZ: I'm back. I'm</p> <p>6 lucky in that the ladies room is directly</p> <p>7 across from the conference room.</p> <p>8 Mr. Dondero's down at the other end</p> <p>9 of the floor, so he will be back shortly.</p> <p>10 And I just saw your note, John. The</p> <p>11 – the videographer said he needed a break;</p> <p>12 and you said, okay, then let's take our</p> <p>13 break now. So we took a restroom break.</p> <p>14 MR. MORRIS: I think everybody on</p> <p>15 the phone – and there's a transcript of it</p> <p>16 – knows that I specifically said, how long</p> <p>17 do you need. He said one minute, and I</p> <p>18 said don't go anywhere.</p> <p>19 This is your time, not mine.</p> <p>20 MS. DEITSCH-PEREZ: Prior to that,</p> <p>21 you said, let's take the break now.</p> <p>22 MR. MORRIS: Yeah, to allow him to</p> <p>23 change the tape. I'm not going to question</p> <p>24 anybody on the call, but I'm 100 percent</p> <p>25 certain that they would all tell you – and</p>	<p>Page 97</p> <p>1 JAMES DONDERO</p> <p>2 the record will reflect, I specifically</p> <p>3 said do not leave.</p> <p>4 MS. DEITSCH-PEREZ: Okay.</p> <p>5 Mr. Dondero is back.</p> <p>6 You have to turn – turn the video</p> <p>7 on.</p> <p>8 THE WITNESS: I'm back.</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. All right. Do you see on the screen</p> <p>11 there's a document that's been marked as</p> <p>12 Exhibit 53?</p> <p>13 A. Yup.</p> <p>14 Q. Do you see there's an e-mail string</p> <p>15 dated May 2, 2019?</p> <p>16 A. Yes.</p> <p>17 Q. And do you see that Mr. Waterhouse</p> <p>18 has – if you look at the second to the top,</p> <p>19 Mr. Waterhouse's e-mail is forwarding a</p> <p>20 spreadsheet to David Klos and Kristin Hendrix</p> <p>21 that he described as, quote, "The support for</p> <p>22 the payment to GAF by HCMFA?"</p> <p>23 A. Yes.</p> <p>24 Q. What's GAF?</p> <p>25 A. That's the fund itself that owned</p>

<p>Page 98</p> <p>1 JAMES DONDERO</p> <p>2 the TerreStar investment. The SEC wanted, I</p> <p>3 believe, some payment to go to them; but they</p> <p>4 all, meaning the SEC, and the SEC wanted some</p> <p>5 payment to go to the fund itself for the</p> <p>6 benefit of the investors.</p> <p>7 Q. Okay.</p> <p>8 MR. MORRIS: Can we can to the chart</p> <p>9 that's attached.</p> <p>10 MS. CANTY: (Complies with request.)</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Have you ever seen this chart</p> <p>13 before, sir?</p> <p>14 A. I don't believe so specifically, but</p> <p>15 I understand what it is.</p> <p>16 Q. And is it your understanding, based</p> <p>17 on this chart, that the loss to the fund was</p> <p>18 \$6,068,851?</p> <p>19 MS. DEITSCH-PEREZ: Object to the</p> <p>20 form.</p> <p>21 THE WITNESS: Yes.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q. And there's -- there's a column</p> <p>24 there that's lost to fund.</p> <p>25 Do you see that?</p>	<p>Page 99</p> <p>1 JAMES DONDERO</p> <p>2 A. Yes.</p> <p>3 Q. And is it -- is it consistent with</p> <p>4 your recollection that the estimated loss of</p> <p>5 the fund or to the fund was approximately</p> <p>6 \$6 million?</p> <p>7 A. Yes. There is approximately --</p> <p>8 there's some other small numbers moving around,</p> <p>9 but yes.</p> <p>10 Q. Okay. And do you recall that HCMFA</p> <p>11 informed the SEC that HCMFA would make the fund</p> <p>12 whole by paying it an amount of money equal to</p> <p>13 the loss?</p> <p>14 A. Yes.</p> <p>15 Q. And, in fact, HCMFA paid the fund</p> <p>16 approximately \$6 million in connection with the</p> <p>17 losses sustained as a result of the NAV error,</p> <p>18 correct?</p> <p>19 A. I don't know details like that.</p> <p>20 Q. So you're not -- you're not aware of</p> <p>21 the fact that HCMFA paid to the fund</p> <p>22 approximately \$6 million in May of 2019?</p> <p>23 A. Approximately six or approximately</p> <p>24 seven. I -- I don't know. Whatever the</p> <p>25 agreement was with the SEC to be paid to them</p>
<p>Page 100</p> <p>1 JAMES DONDERO</p> <p>2 or to the fund or whatever, I -- I have all</p> <p>3 faith and confidence we complied with; but I</p> <p>4 don't -- I don't know the exact numbers. I'm</p> <p>5 not aware of the exact numbers.</p> <p>6 Q. Do you understand that this analysis</p> <p>7 shows how HCMFA was going to finance the</p> <p>8 payment to the fund as a result of the NAV</p> <p>9 error?</p> <p>10 MS. DEITSCH-PEREZ: Object to the</p> <p>11 form.</p> <p>12 THE WITNESS: I'm sorry. Could you</p> <p>13 repeat that question again?</p> <p>14 BY MR. MORRIS:</p> <p>15 Q. Sure. Do you understand that</p> <p>16 this -- that this chart here sets forth the</p> <p>17 manner in which HCMFA is going to fund the</p> <p>18 payment that it was making to GAF on account of</p> <p>19 the NAV error?</p> <p>20 A. I would call it more of a</p> <p>21 calculation on where the amounts are coming</p> <p>22 from. It doesn't appear to me that this is a</p> <p>23 funding statement.</p> <p>24 Q. Okay. I appreciate that.</p> <p>25 So -- so your interpretation of this</p>	<p>Page 101</p> <p>1 JAMES DONDERO</p> <p>2 is that this shows the sources of money that</p> <p>3 were going to be used to make the payment; is</p> <p>4 that fair?</p> <p>5 MS. DEITSCH-PEREZ: Objection to the</p> <p>6 form.</p> <p>7 THE WITNESS: Yeah. I think it's a</p> <p>8 reconciliation between the insurance, some</p> <p>9 forgiveness of fees, and then additional</p> <p>10 monies that are necessary.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Okay. And --</p> <p>13 A. Yeah. Go ahead.</p> <p>14 Q. Did HCMFA file an insurance claim in</p> <p>15 connection with the NAV error?</p> <p>16 A. I believe they did get -- I believe</p> <p>17 they did, and I believe they did get paid some</p> <p>18 insurance.</p> <p>19 Q. And -- and if we look at the totals</p> <p>20 column in the right, did HCMFA receive, to the</p> <p>21 best of your recollection, approximately</p> <p>22 \$5 million from insurance?</p> <p>23 A. Yes. I think we should work -- I</p> <p>24 think we should work from that column --</p> <p>25 Q. Okay. So let's --</p>

<p>Page 102</p> <p>1 JAMES DONDERO</p> <p>2 A. – versus the other column, yeah.</p> <p>3 Q. I apologize, Mr. Dondero.</p> <p>4 So if we look at the last column,</p> <p>5 the total, does that comport with your</p> <p>6 recollection that HCMFA paid GAF approximately</p> <p>7 \$7.44 million in May of 2019 on account of the</p> <p>8 NAV error?</p> <p>9 A. I think it's more than that, and I</p> <p>10 think it's also the 375 below that.</p> <p>11 Q. Okay.</p> <p>12 A. And then I – yeah, definitely those</p> <p>13 two numbers in aggregate. I don't know if it's</p> <p>14 any others.</p> <p>15 Q. Okay. And did, to the best of your</p> <p>16 recollection, HCMFA make an insurance claim on</p> <p>17 which it received almost \$5 million as a source</p> <p>18 of funding for the payment that was due to GAF?</p> <p>19 A. Yes.</p> <p>20 Q. Are you familiar with that insurance</p> <p>21 claim?</p> <p>22 A. No.</p> <p>23 Q. Do you know if the insurance claim</p> <p>24 made any mention of Highland?</p> <p>25 A. I have no idea. I have no idea.</p>	<p>Page 103</p> <p>1 JAMES DONDERO</p> <p>2 Q. Okay. So as a – as a matter of</p> <p>3 rough math, would you agree with me that the</p> <p>4 insurance procedures funded approximately</p> <p>5 5 million of the \$7.8 million that was the</p> <p>6 total loss?</p> <p>7 MS. DEITSCH-PEREZ: Object to the</p> <p>8 form.</p> <p>9 THE WITNESS: This was the amount</p> <p>10 due to the investors. I – I – my rough</p> <p>11 recollection is there was another amount</p> <p>12 that was due the SEC, but I don't remember</p> <p>13 specifically.</p> <p>14 BY MR. MORRIS:</p> <p>15 Q. Okay. And do you see in the middle</p> <p>16 of the page, there's a total additional payment</p> <p>17 from advisor of approximately \$2.4 million?</p> <p>18 A. Yes.</p> <p>19 Q. And is it your understanding that</p> <p>20 that is the amount that HCMFA had to come out</p> <p>21 of pocket in order to fully fund the GAF</p> <p>22 payment?</p> <p>23 A. Yes, but it's clear to me also that</p> <p>24 there's a forgiveness of management fees, also.</p> <p>25 Q. Okay. But is two point – but is</p>
<p>Page 104</p> <p>1 JAMES DONDERO</p> <p>2 \$2.4 million the amount of money that HCMFA</p> <p>3 needed in order to fully fund the payment to</p> <p>4 GAF?</p> <p>5 A. And I don't want to mince small</p> <p>6 numbers; but to the extent that they gave up</p> <p>7 their management fees also, like that 1939 or</p> <p>8 the 39 above that – and I don't know what that</p> <p>9 47 is above that – those are management fees</p> <p>10 that would have paid salaries and expenses at</p> <p>11 HCMFA also.</p> <p>12 So to the extent they gave up those</p> <p>13 items as part of the settlement, then HCMFA</p> <p>14 would have needed more money than even the 2.4</p> <p>15 that came from Highland.</p> <p>16 Q. Do you know if HCMFA ever informed</p> <p>17 the SEC that Highland was responsible for the</p> <p>18 NAV error?</p> <p>19 A. I – I don't know. We wouldn't have</p> <p>20 hidden it if they would have asked. My</p> <p>21 experience with the SEC is they identify the</p> <p>22 advisor, and who the advisor picks for vendors</p> <p>23 the advisor's responsible for.</p> <p>24 MR. MORRIS: I move to strike</p> <p>25 everything after "I don't know."</p>	<p>Page 105</p> <p>1 JAMES DONDERO</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. Did you ever direct anyone to inform</p> <p>4 the SEC that Highland was responsible for the</p> <p>5 NAV error?</p> <p>6 A. No, not that I recall.</p> <p>7 Q. Do you know if anybody acting on</p> <p>8 behalf of HCMFA ever informed the SEC that</p> <p>9 Highland was responsible for the NAV error?</p> <p>10 A. I don't know.</p> <p>11 Q. Do you know if HCMFA ever informed</p> <p>12 GAF that Highland was responsible for the NAV</p> <p>13 error?</p> <p>14 A. Yes.</p> <p>15 Q. And is that reflected in writing</p> <p>16 anywhere?</p> <p>17 A. Yes. Numerous places.</p> <p>18 Q. And what writing would that be</p> <p>19 reflected in?</p> <p>20 A. The board minutes. There were</p> <p>21 conversations every board meeting for over a</p> <p>22 year. The retail board represents GAF. They</p> <p>23 were well aware of the subadvisory agreements,</p> <p>24 and they were well aware that all the staff</p> <p>25 regarding valuation were housed at Highland;</p>

<p>Page 106</p> <p>1 JAMES DONDERO</p> <p>2 all the valuation activities were performed by</p> <p>3 Highland. And GAF and HCMFA relied on</p> <p>4 Highland, and it was a material part of board</p> <p>5 conversations for over a year.</p> <p>6 MR. MORRIS: Okay. I move to</p> <p>7 strike.</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. I'm asking you just about writings,</p> <p>10 sir.</p> <p>11 Can you identify –</p> <p>12 A. No, no, no. I'm not – I'm not</p> <p>13 going to – I'm not going to allow that strike,</p> <p>14 or I'm not answering anymore questions.</p> <p>15 Q. Well, the judge will be the</p> <p>16 determiner of that. So I'd like you to answer</p> <p>17 my question.</p> <p>18 Is there any – I don't want to know</p> <p>19 about board meetings.</p> <p>20 Is there anything in writing that</p> <p>21 HCMFA provided to GAF that specifically stated</p> <p>22 that Highland and not HCMFA was responsible for</p> <p>23 the NAV error?</p> <p>24 MS. DEITSCH-PEREZ: Asked and</p> <p>25 answered.</p>	<p>Page 107</p> <p>1 JAMES DONDERO</p> <p>2 THE WITNESS: Yes. Numerous board</p> <p>3 minutes.</p> <p>4 BY MR. MORRIS:</p> <p>5 Q. Okay. And have those board minutes</p> <p>6 been produced in this litigation?</p> <p>7 A. I don't know.</p> <p>8 Q. Okay.</p> <p>9 MR. MORRIS: Let's go to the next</p> <p>10 exhibit, 54.</p> <p>11 MS. CANTY: (Complies with request.)</p> <p>12 (Whereupon, Exhibit 54, E-mail</p> <p>13 correspondence, Bates stamped D-CNL003777</p> <p>14 through D-CNL003779, marked for</p> <p>15 identification, as of this date.)</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. Do you see that on the same day, at</p> <p>18 the bottom, Mr. Klos sent an e-mail to the</p> <p>19 Corporate Accounting Group?</p> <p>20 A. Yes.</p> <p>21 Q. And do you see that he instructed</p> <p>22 the Corporate Accounting Group to transfer</p> <p>23 \$2.4 million from HCMLT to HCMFA?</p> <p>24 A. Yes.</p> <p>25 Q. And do you see that he specifically</p>
<p>Page 108</p> <p>1 JAMES DONDERO</p> <p>2 informed the Corporate Accounting Group that</p> <p>3 this transaction was a, quote, "New inter</p> <p>4 co-loan?</p> <p>5 A. Yes.</p> <p>6 Q. Do you see that he asked</p> <p>7 Christian – Kristin or Hayley to prepare a</p> <p>8 Promissory Note for discussion?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Are you aware in May 2019,</p> <p>11 Frank Waterhouse was included in the e-mail</p> <p>12 string identified as Corporate Accounting?</p> <p>13 A. I do not have that awareness.</p> <p>14 Q. Okay. Do you see at the top</p> <p>15 Ms. Hendrix – Ms. Hendrix's response to</p> <p>16 Mr. Klos's e-mail and attaches a copy of a</p> <p>17 Promissory Note?</p> <p>18 A. Yes.</p> <p>19 Q. Okay.</p> <p>20 MR. MORRIS: Can we just go to the</p> <p>21 attachment, please.</p> <p>22 MS. CANTY: (Complies with request.)</p> <p>23 BY MR. MORRIS:</p> <p>24 Q. Do you see that that is a Promissory</p> <p>25 Note dated May 2, 2019, in the amount of</p>	<p>Page 109</p> <p>1 JAMES DONDERO</p> <p>2 \$2.4 million that where the maker is Highland</p> <p>3 Capital Management Fund Advisors, L.P.?</p> <p>4 A. Yeah.</p> <p>5 Q. Have you ever seen this before?</p> <p>6 A. I think in our last deposition.</p> <p>7 Q. Okay. Do you recall when you saw it</p> <p>8 for the first time?</p> <p>9 A. Our last deposition.</p> <p>10 Q. Do you recall when you learned about</p> <p>11 the existence of this document for the first</p> <p>12 time?</p> <p>13 A. I believe somehow regarding the</p> <p>14 litigation.</p> <p>15 Q. Okay. So you have no knowledge of</p> <p>16 this Promissory Note until after the litigation</p> <p>17 was commenced; do I have that right?</p> <p>18 A. Correct.</p> <p>19 Q. So you're not aware of Highland</p> <p>20 having made a demand for payment on this</p> <p>21 Promissory Note in December of 2020?</p> <p>22 A. Not that I recall.</p> <p>23 Q. Okay. Putting aside the question of</p> <p>24 the Promissory Note, do you recall when you</p> <p>25 first learned that the \$2.4 million that you</p>

<p>Page 110</p> <p>1 JAMES DONDERO</p> <p>2 instructed to be paid to HCMFA by Highland in</p> <p>3 May of 2019, do you recall when you first</p> <p>4 learned that that was booked as a loan?</p> <p>5 A. I believe just generally as part of</p> <p>6 this litigation, not before then.</p> <p>7 Q. Are you aware that the Corporate</p> <p>8 Accounting Group created a daily list of wire</p> <p>9 transfers that were being made on behalf of</p> <p>10 Highland and its affiliates?</p> <p>11 A. Not – no, not specifically.</p> <p>12 Q. Okay. So since you did not know</p> <p>13 that the \$2.4 million transfer had been booked</p> <p>14 as a loan, is it fair to say that you never</p> <p>15 told anybody prior to the commencement of this</p> <p>16 litigation that the transaction should not have</p> <p>17 been booked as a loan?</p> <p>18 A. I had no conversations either way</p> <p>19 prior to this litigation regarding the booking</p> <p>20 of the 2.4 million.</p> <p>21 Q. Did you ever take any steps to try</p> <p>22 to determine how Highland and HCMFA accounted</p> <p>23 for the \$2.4 million that you instructed to be</p> <p>24 transferred from Highland to HCMFA in early</p> <p>25 May 2019?</p>	<p>Page 111</p> <p>1 JAMES DONDERO</p> <p>2 A. No.</p> <p>3 Q. Did you rely on Mr. Waterhouse to</p> <p>4 oversee that?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And you did so because he</p> <p>7 held not only the CFO title at Highland, but he</p> <p>8 also held the treasurer title at HCMFA,</p> <p>9 correct?</p> <p>10 MS. DEITSCH-PEREZ: Object to the</p> <p>11 form.</p> <p>12 THE WITNESS: I relied on him</p> <p>13 because generally the accounting function</p> <p>14 across the organization reported up through</p> <p>15 him.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. Let's talk about the \$5 million</p> <p>18 Note.</p> <p>19 Do you recall that in early</p> <p>20 May 2019, in fact, the next day, May 3rd,</p> <p>21 Highland transferred \$5 million to HCMFA?</p> <p>22 A. I – I don't recall specifically.</p> <p>23 Q. Do you recall authorizing the</p> <p>24 transfer of \$5 million from Highland to HCMFA</p> <p>25 in early May 2019?</p>
<p>Page 112</p> <p>1 JAMES DONDERO</p> <p>2 A. Yes, generally.</p> <p>3 Q. Okay. Why did you authorize</p> <p>4 Highland to transfer \$5 million to HCMFA in</p> <p>5 early 2019?</p> <p>6 A. It was part of the overall</p> <p>7 resolution of the TerreStar situation.</p> <p>8 Q. Do you recall that HCMFA paid</p> <p>9 something called a consent fee equal to</p> <p>10 \$5 million in early May 2019?</p> <p>11 A. Well, like I said, I don't recall</p> <p>12 the exact amounts or the exact amounts net of</p> <p>13 insurance; but my recollection it was to</p> <p>14 resolve that.</p> <p>15 Q. Do you know – do you know – did –</p> <p>16 let's real simple.</p> <p>17 Did – did HCMFA pay a consent fee</p> <p>18 in May of 2019?</p> <p>19 A. I – I don't recall.</p> <p>20 Q. Do you know what a consent fee is?</p> <p>21 A. Yes.</p> <p>22 Q. What's a consent fee?</p> <p>23 A. It's a – a fee to encourage</p> <p>24 shareholder vote on something or shareholder</p> <p>25 restitution on something, typically.</p>	<p>Page 113</p> <p>1 JAMES DONDERO</p> <p>2 Q. And did – do you recall if HCMFA</p> <p>3 ever paid a consent fee in the year 2019?</p> <p>4 A. I don't recall.</p> <p>5 Q. Would Highland be responsible at all</p> <p>6 if HCMFA paid a consent fee?</p> <p>7 MS. DEITSCH-PEREZ: Object to the</p> <p>8 form.</p> <p>9 THE WITNESS: It could be. I</p> <p>10 don't – I don't know or remember the</p> <p>11 circumstances.</p> <p>12 BY MR. MORRIS:</p> <p>13 Q. Is the payment of a consent fee a</p> <p>14 voluntary decision by – by HCMFA? Is that</p> <p>15 something that –</p> <p>16 MS. DEITSCH-PEREZ: Object to the</p> <p>17 form.</p> <p>18 MR. MORRIS: Is that – withdrawn.</p> <p>19 That's fair.</p> <p>20 BY MR. MORRIS:</p> <p>21 Q. Is the payment of a consent fee</p> <p>22 required, or is that something that one can</p> <p>23 exercise discretion in whether or not to make?</p> <p>24 MS. DEITSCH-PEREZ: Object to the</p> <p>25 form.</p>

<p>Page 114</p> <p>1 JAMES DONDERO</p> <p>2 THE WITNESS: My answer would be it</p> <p>3 depends.</p> <p>4 BY MR. MORRIS:</p> <p>5 Q. Do you recall whether Highland –</p> <p>6 withdrawn.</p> <p>7 Do you recall whether HCMFA was</p> <p>8 required to make – to make a – to pay a</p> <p>9 consent fee at any time in 2019?</p> <p>10 A. I don't recall.</p> <p>11 Q. Do you recall ever believing that</p> <p>12 HCMFA paid a consent fee because of something</p> <p>13 that – because of a mistake that Highland</p> <p>14 made?</p> <p>15 A. It could be. I don't know.</p> <p>16 Q. I'm just asking if you had a</p> <p>17 recollection?</p> <p>18 A. I don't have a recollection.</p> <p>19 Q. Okay.</p> <p>20 MR. MORRIS: To the videographer, I</p> <p>21 think Mr. Dondero's screen has frozen.</p> <p>22 MS. DEITSCH-PEREZ: John, your</p> <p>23 screen is frozen, too.</p> <p>24 MR. MORRIS: I'm –</p> <p>25 MS. DEITSCH-PEREZ: I'm also – hang</p>	<p>Page 115</p> <p>1 JAMES DONDERO</p> <p>2 on. I've lost contact. Give me a minute.</p> <p>3 THE VIDEOGRAPHER: Okay. I'd like</p> <p>4 us to go off record. Do you agree?</p> <p>5 MR. MORRIS: Yeah, but please don't</p> <p>6 leave.</p> <p>7 MS. DEITSCH-PEREZ: Yes, we agree.</p> <p>8 THE VIDEOGRAPHER: All right. Off</p> <p>9 the record at 3:53.</p> <p>10 (Discussion held off the record.)</p> <p>11 THE VIDEOGRAPHER: We are back on</p> <p>12 the record at 3:54.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. Okay. Can we put up – no. Before</p> <p>15 we do that, Mr. Dondero, can you hear me?</p> <p>16 We can't hear you. Are you on mute?</p> <p>17 Are you on mute? Can you speak?</p> <p>18 You're yelling at me now. Stop</p> <p>19 yelling at me.</p> <p>20 THE VIDEOGRAPHER: I'm seeing is</p> <p>21 that Mr. Dondero is on mute.</p> <p>22 (Interruption.)</p> <p>23 THE VIDEOGRAPHER: We've got – do</p> <p>24 you want to go off video record?</p> <p>25 MR. MORRIS: No.</p>
<p>Page 116</p> <p>1 JAMES DONDERO</p> <p>2 Can somebody help Mr. Dondero and</p> <p>3 get his audio feed fixed?</p> <p>4 Thank you, sir.</p> <p>5 MS. DEITSCH-PEREZ: Does this make a</p> <p>6 difference?</p> <p>7 MR. MORRIS: It sure does.</p> <p>8 THE WITNESS: Hello, hello.</p> <p>9 THE MORRIS: Thank you. All right.</p> <p>10 Let's try and – let's try and finish this</p> <p>11 up.</p> <p>12 BY MR. MORRIS:</p> <p>13 Q. Are you ready, sir?</p> <p>14 A. Yes.</p> <p>15 Q. Were you aware in May 2019 that the</p> <p>16 \$5-million transfer from Highland to HCMFA was</p> <p>17 booked as a loan?</p> <p>18 A. No.</p> <p>19 MR. MORRIS: Can we put up</p> <p>20 Exhibit 56, please.</p> <p>21 MS. CANTY: (Complies with request.)</p> <p>22 (Whereupon, Exhibit 56, E-mail</p> <p>23 correspondence, Bates stamped D-CNL003763,</p> <p>24 marked for identification, as of this</p> <p>25 date.)</p>	<p>Page 117</p> <p>1 JAMES DONDERO</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. All right. Do you see that this is</p> <p>4 an e-mail from Ms. Hendrix to the Corporate</p> <p>5 Accounting Group on May 3, 2019?</p> <p>6 Do you see that, sir?</p> <p>7 A. Yes.</p> <p>8 Q. And do you see that Ms. Hendrix told</p> <p>9 corporate accounting to transfer \$5 million as</p> <p>10 a, quote, "new loan," close quote?</p> <p>11 A. Yes.</p> <p>12 Q. And did you see Ms. Hendrix also</p> <p>13 said that she would, quote, "paper the loan,"</p> <p>14 close quote?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. You're aware that from time</p> <p>17 to time, members of the Corporate Accounting</p> <p>18 Group used a template for a Promissory Note</p> <p>19 that had been previously prepared by counsel,</p> <p>20 correct?</p> <p>21 MS. DEITSCH-PEREZ: Object to the</p> <p>22 form.</p> <p>23 THE WITNESS: I – yeah. I'm aware</p> <p>24 they have a loan template, yes.</p> <p>25</p>

<p>Page 118</p> <p>1 JAMES DONDERO</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. Okay. Do you see there's a</p> <p>4 parenthetical in the first sentence that says,</p> <p>5 "(4.4M should be coming in from Jim soon)"?</p> <p>6 A. Yes.</p> <p>7 Q. Do you know what that refers to?</p> <p>8 A. My – my educated – boy. My</p> <p>9 educated speculation is that Highland didn't</p> <p>10 have enough cash, so I probably put four into</p> <p>11 Highland for Highland to send to HCMFA. That's</p> <p>12 my educated guess; but otherwise, I don't know</p> <p>13 specifically.</p> <p>14 Q. And do you recall that you had taken</p> <p>15 out a loan from Highland earlier in the year,</p> <p>16 and this payment was credited against the</p> <p>17 principal and interest then due on that Note?</p> <p>18 A. I don't have specific awareness.</p> <p>19 That would make sense.</p> <p>20 Q. Okay.</p> <p>21 A. Versus – versus creating a new loan</p> <p>22 or something.</p> <p>23 Q. Okay.</p> <p>24 MR. MORRIS: Let's go to Exhibit 57,</p> <p>25 please.</p>	<p>Page 119</p> <p>1 JAMES DONDERO</p> <p>2 MS. CANTY: (Complies with request.)</p> <p>3 (Whereupon, Exhibit 57, Promissory</p> <p>4 Note, Bates stamped D-CNL003764 through</p> <p>5 D-CNL003765, marked for identification, as</p> <p>6 of this date.)</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. In fact, were you aware, sir, that</p> <p>9 in May 2019, you paid Highland exactly</p> <p>10 \$7.5 million?</p> <p>11 A. Not specifically, but it makes sense</p> <p>12 given the context we're discussing.</p> <p>13 Q. Okay. So the context that we're</p> <p>14 discussing was HCMFA needed \$7.5 million.</p> <p>15 Highland didn't have it. So that seven – you</p> <p>16 paid \$7.5 million to Highland, which was</p> <p>17 applied against your outstanding note. And</p> <p>18 then Highland transferred that money to HCMFA.</p> <p>19 Does that sound right to you?</p> <p>20 A. Generally, yes.</p> <p>21 Q. Okay. So now if we look at this</p> <p>22 note that's on the screen, do you see this is a</p> <p>23 Promissory Note for \$5 million dated May 3,</p> <p>24 2019?</p> <p>25 A. Yes.</p>
<p>Page 120</p> <p>1 JAMES DONDERO</p> <p>2 Q. And did you see this for the first</p> <p>3 time when I showed it to you late last week?</p> <p>4 A. Yes.</p> <p>5 Q. And did you learn about the loan</p> <p>6 from Highland to HCMFA for the first time after</p> <p>7 the litigation was commenced?</p> <p>8 A. That's the first time I remember.</p> <p>9 Q. And did you learn that Highland and</p> <p>10 HCMFA had booked the \$5-million transfer in May</p> <p>11 of 2019 as a loan for the first time after the</p> <p>12 litigation was commenced?</p> <p>13 A. That is my recollection.</p> <p>14 Q. Okay. We talked at your first</p> <p>15 deposition in May about Highland's audited</p> <p>16 financial statements.</p> <p>17 I don't know if you have a</p> <p>18 recollection of that. Do you?</p> <p>19 A. Just generally, yes.</p> <p>20 Q. Okay. I just want to focus on these</p> <p>21 two notes.</p> <p>22 For this portion of the deposition,</p> <p>23 we are questioning you in your individual</p> <p>24 capacity, and you're only focused on these two</p> <p>25 notes from HCMFA to Highland, okay?</p>	<p>Page 121</p> <p>1 JAMES DONDERO</p> <p>2 A. Okay.</p> <p>3 Q. Okay. When did you first learn that</p> <p>4 these notes were carried as assets on</p> <p>5 Highland's balance sheet?</p> <p>6 A. Like I said, I – my recollection is</p> <p>7 that as part of the bankruptcy and part of the</p> <p>8 litigation.</p> <p>9 Q. And so did you learn of it as part</p> <p>10 of the bankruptcy before the litigation was</p> <p>11 commenced, or did you learn that these notes</p> <p>12 were carried as assets after – only after the</p> <p>13 litigation was commenced?</p> <p>14 A. I believe only after. Especially,</p> <p>15 the specificity with regard to the notes, only</p> <p>16 after the litigation was commenced.</p> <p>17 Q. Okay. When did you learn for the</p> <p>18 first time that these notes were carried as</p> <p>19 liabilities on HCMFA's balance sheet?</p> <p>20 Withdrawn. No foundation.</p> <p>21 Are you aware that these notes have</p> <p>22 been carried as liabilities on HCMFA's balance</p> <p>23 sheet?</p> <p>24 A. I wasn't – I wasn't – I wasn't</p> <p>25 aware prior to the litigation.</p>

<p>Page 122</p> <p>1 JAMES DONDERO</p> <p>2 Q. Okay. Did you learn after the</p> <p>3 litigation that these notes had been carried as</p> <p>4 liabilities on HCMFA's balance sheets?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Did you ever review</p> <p>7 Highland's audited financial statements?</p> <p>8 A. Not with any specificity.</p> <p>9 Q. Are you aware that Highland gave</p> <p>10 these Promissory Notes to PWC as part of the</p> <p>11 audit process?</p> <p>12 A. I would assume they did, but I don't</p> <p>13 have specific awareness.</p> <p>14 Q. Okay. And why do you assume that</p> <p>15 they did?</p> <p>16 A. As part of complete financials to</p> <p>17 the extent that they were made by Kristin or</p> <p>18 whoever, properly or improperly. Once they</p> <p>19 existed, they would have been part of a</p> <p>20 complete audit.</p> <p>21 Q. Are you aware that these two</p> <p>22 Promissory Notes were disclosed in Highland's</p> <p>23 audited financial statements for the period</p> <p>24 ending December 31, 2018, as subsequent events?</p> <p>25 A. No.</p>	<p>Page 123</p> <p>1 JAMES DONDERO</p> <p>2 Q. Okay.</p> <p>3 MR. MORRIS: Can we put up</p> <p>4 Exhibit 34, please.</p> <p>5 MS. CANTY: (Complies with request.)</p> <p>6 (Whereupon, Exhibit 34, Highland</p> <p>7 Capital Management, L.P., Consolidated</p> <p>8 Financial Statements and Supplemental</p> <p>9 Information, dated December 31, 2018, Bates</p> <p>10 stamped D-CNL000212 through D-CNL000257,</p> <p>11 marked for identification, as of this</p> <p>12 date.)</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. And turn to – just if you can see,</p> <p>15 sir, the first page of this is the December 31,</p> <p>16 2018, financials.</p> <p>17 MR. MORRIS: And if we could go to</p> <p>18 the second or third page to see</p> <p>19 PricewaterhouseCoopers' signature.</p> <p>20 MS. CANTY: (Complies with request.)</p> <p>21 BY MR. MORRIS:</p> <p>22 Q. And do you see that</p> <p>23 PricewaterhouseCoopers signed off on the audit</p> <p>24 on June 3, 2019?</p> <p>25 A. Yes.</p>
<p>Page 124</p> <p>1 JAMES DONDERO</p> <p>2 Q. Okay.</p> <p>3 MR. MORRIS: Can we go to page 252</p> <p>4 of the document? It's got to be – let's</p> <p>5 see the Bates.</p> <p>6 MS. CANTY: (Complies with request.)</p> <p>7 MR. MORRIS: Yeah. Right there.</p> <p>8 Okay. Scroll just to the page before so we</p> <p>9 can see the heading.</p> <p>10 MS. CANTY: (Complies with request.)</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Okay. Do you see that this is the</p> <p>13 section of the audited financials entitled</p> <p>14 "Subsequent Events"?</p> <p>15 A. Yes.</p> <p>16 Q. And is it your understanding that</p> <p>17 the auditors include in subsequent events</p> <p>18 material transactions THAT occur between the</p> <p>19 end of the fiscal period in which had audit has</p> <p>20 been conducted and the date that the auditors</p> <p>21 sign off?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. So if you look at page 39,</p> <p>24 the next to the last paragraph, do you see, it</p> <p>25 says, quote, "Over the course of 2019 through</p>	<p>Page 125</p> <p>1 JAMES DONDERO</p> <p>2 the report date, HCMFA issued Promissory Notes</p> <p>3 to the partnership in the aggregate amount of</p> <p>4 \$7.4 million?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And are you surprised to see</p> <p>7 that in the audit report?</p> <p>8 MS. DEITSCH-PEREZ: Object to the</p> <p>9 form.</p> <p>10 MR. MORRIS: Withdrawn.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Have you seen – have you seen this</p> <p>13 entry in the audit report before this moment?</p> <p>14 A. No.</p> <p>15 Q. Okay. Are you aware that Highland</p> <p>16 employees were responsible for drafting the</p> <p>17 audit report?</p> <p>18 A. Responsible for drafting the audit</p> <p>19 report? I don't know if that's a fair</p> <p>20 statement.</p> <p>21 I think they provide the detail; but</p> <p>22 my understanding, the audit report is a work</p> <p>23 product of the accounting firm. That's my</p> <p>24 understanding.</p> <p>25 Q. Was there a group within Highland</p>

<p>Page 126</p> <p>1 JAMES DONDERO</p> <p>2 that was responsible for working with the</p> <p>3 auditors in the preparation of the audit</p> <p>4 reports?</p> <p>5 A. Yeah, yes.</p> <p>6 Q. Do you know what group that was?</p> <p>7 A. I believe there's a financial</p> <p>8 reporting group that reports to Frank that</p> <p>9 handles this interaction.</p> <p>10 Q. Are you familiar – are you aware of</p> <p>11 what role Mr. Waterhouse plays, if any, in</p> <p>12 connection with Highland's annual audit, at</p> <p>13 least during the time that you were serving as</p> <p>14 president?</p> <p>15 A. I think he – he coordinates – I</p> <p>16 think he has to sign off on many aspects of it,</p> <p>17 you know, as a C suite executive. So he's</p> <p>18 responsible for, you know, completeness,</p> <p>19 integrity, et cetera.</p> <p>20 And there's a certain amount of</p> <p>21 reliance that PWC puts on it; but my</p> <p>22 understanding is audits for the last bunch of</p> <p>23 years has been pretty much a hundred percent</p> <p>24 sampling and verification.</p> <p>25 Q. High- –</p>	<p>Page 127</p> <p>1 JAMES DONDERO</p> <p>2 A. – PWC.</p> <p>3 Q. I apologize, sir.</p> <p>4 Highland was the sole source of</p> <p>5 information that's contained in its audit</p> <p>6 reports, right, to the best of your knowledge?</p> <p>7 A. No. No. When I – the last thing I</p> <p>8 said a minute ago about I believe it was a</p> <p>9 hundred percent sampling and verification, I</p> <p>10 think the audit firm ties back to vendors,</p> <p>11 credit agreements, source documents, et cetera.</p> <p>12 Highland is not the only source of</p> <p>13 this information.</p> <p>14 Q. You were also responsible for the</p> <p>15 audit report; is that fair?</p> <p>16 A. Yes.</p> <p>17 Q. And that's because you signed a</p> <p>18 management representation letter, correct?</p> <p>19 A. Yes.</p> <p>20 Q. And do you have an understanding of</p> <p>21 what management a representation letter is?</p> <p>22 MS. DEITSCH-PEREZ: Object to the</p> <p>23 form. I think you've asked this in each</p> <p>24 day of the deposition.</p> <p>25 MR. MORRIS: Okay. Just trying to</p>
<p>Page 128</p> <p>1 JAMES DONDERO</p> <p>2 get some background here.</p> <p>3 THE WITNESS: Yes, I have a general</p> <p>4 understanding. They very from accounting</p> <p>5 firm to accounting firm, and they very</p> <p>6 depending upon the type of audit. But I</p> <p>7 have a general understanding of them, yes.</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. Okay. And you're – are you aware</p> <p>10 that HCMFA had its financial statements audited</p> <p>11 by PWC as well?</p> <p>12 A. Yes.</p> <p>13 Q. Are you aware that HCMFA disclosed</p> <p>14 the May 2019 Notes in its own audited financial</p> <p>15 statements?</p> <p>16 A. I assume so.</p> <p>17 Q. Have you ever –</p> <p>18 A. I don't have specific – I don't</p> <p>19 have specific awareness, but it's not reported</p> <p>20 here but not on HCMFA; so I assume they are,</p> <p>21 yes.</p> <p>22 Q. Okay. And do you sign Management</p> <p>23 Representation Letters for HCMFA's audit as you</p> <p>24 do for Highland?</p> <p>25 A. I believe so.</p>	<p>Page 129</p> <p>1 JAMES DONDERO</p> <p>2 Q. Have you ever told anyone that</p> <p>3 HCMFA's audited financial statements for the</p> <p>4 period ending December 31, 2018, inaccurately</p> <p>5 described the \$7.4 million transferred from</p> <p>6 Highland to HCMFA as loans?</p> <p>7 MS. DEITSCH-PEREZ: Object to the</p> <p>8 form.</p> <p>9 THE WITNESS: No, I have not; but I</p> <p>10 haven't been involved in any of the audit</p> <p>11 functions for quite some time.</p> <p>12 I don't think I was involved or</p> <p>13 signed Management Representation Letters</p> <p>14 for any period covered by this.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. Okay. Let's switch gears.</p> <p>17 The advisors have annual contracts</p> <p>18 to manage certain retail funds, correct?</p> <p>19 A. Yes.</p> <p>20 Q. And the retail funds have a board</p> <p>21 that decides whether to renew the contracts</p> <p>22 with the advisors, correct?</p> <p>23 A. Yes.</p> <p>24 Q. And in connection with the annual</p> <p>25 renewal, the advisors provide information to</p>

<p>Page 130</p> <p>1 JAMES DONDERO</p> <p>2 the retail board, correct?</p> <p>3 A. Yes.</p> <p>4 Q. And you've participated in meetings</p> <p>5 with the retail board concerning the renewal</p> <p>6 process, correct?</p> <p>7 A. Sometimes.</p> <p>8 Q. Okay. Do you recall that in late</p> <p>9 2020, the advisors provided a written memo to</p> <p>10 the retail board in connection with the annual</p> <p>11 15-C review process?</p> <p>12 A. No.</p> <p>13 Q. Okay.</p> <p>14 MR. MORRIS: Can we put up</p> <p>15 Exhibit 59, please.</p> <p>16 MS. CANTY: (Complies with request.)</p> <p>17 (Whereupon, Exhibit 59, Memorandum,</p> <p>18 dated October 23, 2020, Bates stamped</p> <p>19 HCMFAS 000025 through HCMFAS 000031, marked</p> <p>20 for identification, as of this date.)</p> <p>21 BY MR. MORRIS:</p> <p>22 Q. Do you see that this is a memo dated</p> <p>23 October 23, 2020?</p> <p>24 A. Yes.</p> <p>25 Q. Is it fair to describe this memo as</p>	<p>Page 131</p> <p>1 JAMES DONDERO</p> <p>2 a memo from the advisors to the retail boards</p> <p>3 concerning a supplemental 15-C information</p> <p>4 request?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. As always, Mr. Dondero, you</p> <p>7 can view any portion of this document. But if</p> <p>8 we could just scroll down a little bit, I just</p> <p>9 want to know --</p> <p>10 MS. DEITSCH-PEREZ: Do we have a</p> <p>11 copy of this document? Is it in your book?</p> <p>12 MR. MORRIS: No.</p> <p>13 MS. DEITSCH-PEREZ: Okay. Well,</p> <p>14 then he can't actually look at it. He's</p> <p>15 looking at what's on the screen.</p> <p>16 MR. MORRIS: Please.</p> <p>17 BY MR. MORRIS:</p> <p>18 Q. Mr. Dondero, do you understand what</p> <p>19 I meant?</p> <p>20 Will you let me know if there's any</p> <p>21 portion of the document you want to see?</p> <p>22 A. Sure. Can you -- can you just keep</p> <p>23 scrolling and let me see the next page?</p> <p>24 Q. Thank you, sir.</p> <p>25 MS. CANTY: (Complies with request.)</p>
<p>Page 132</p> <p>1 JAMES DONDERO</p> <p>2 THE WITNESS: Just stop there for a</p> <p>3 second.</p> <p>4 MS. CANTY: (Complies with request.)</p> <p>5 THE WITNESS: Okay. Keep going.</p> <p>6 MS. CANTY: (Complies with request.)</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. Just -- I'm going to ask you</p> <p>9 questions about Section 2 just so you know, but</p> <p>10 you're welcome to view any portion of this</p> <p>11 document as you believe necessary.</p> <p>12 MS. CANTY: I also put it in the</p> <p>13 chat, John.</p> <p>14 MR. MORRIS: Thank you.</p> <p>15 THE WITNESS: I see it.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. Okay. So --</p> <p>18 A. Can you go -- let's keep going.</p> <p>19 Just I'll quickly read the whole thing.</p> <p>20 Q. No problem.</p> <p>21 A. That's it. Okay. Got it. All</p> <p>22 right.</p> <p>23 Q. Okay. So now that you've seen the</p> <p>24 substance of the memo, do you recall if you saw</p> <p>25 it before today?</p>	<p>Page 133</p> <p>1 JAMES DONDERO</p> <p>2 A. I've never seen it before today.</p> <p>3 Q. Okay. So do you know who's</p> <p>4 responsible for preparing a memo of this type</p> <p>5 on behalf of the advisors?</p> <p>6 A. Let's go back to the front and see</p> <p>7 who it's from.</p> <p>8 Q. Sure.</p> <p>9 MS. CANTY: (Complies with request.)</p> <p>10 BY MR. MORRIS:</p> <p>11 Q. Is that --</p> <p>12 A. Yeah. Now, I -- given what it is,</p> <p>13 it's something that, I'm sure, comes out of</p> <p>14 legal and compliance.</p> <p>15 Q. And does -- do the advisors have --</p> <p>16 withdrawn.</p> <p>17 Did the advisors have their own</p> <p>18 legal and compliance officers as of October 23,</p> <p>19 2020?</p> <p>20 A. No.</p> <p>21 Q. Did they have any -- did anybody</p> <p>22 serve as the advisors' general counsel as of</p> <p>23 October 23, 2020?</p> <p>24 A. My belief and recollection is the</p> <p>25 Shared Services Agreements provided the legal</p>

<p>Page 134</p> <p>1 JAMES DONDERO</p> <p>2 and accounting support for all the funds listed</p> <p>3 in the "to" section here.</p> <p>4 As I said earlier, NexPoint has a</p> <p>5 couple accountants – I mean – I'm sorry – a</p> <p>6 couple lawyers who do real estate transactions</p> <p>7 stuff. Their – their title – their title</p> <p>8 meaning DC's counsel, DC Sauter, who's the most</p> <p>9 senior attorney there, it might be general</p> <p>10 counsel; but he only does real estate</p> <p>11 transactions.</p> <p>12 The legal dependents of NexPoint and</p> <p>13 HCMFA was on the Shared Services Agreement and</p> <p>14 the Highland attorneys that performed those</p> <p>15 Shared Services Agreements.</p> <p>16 Q. Okay. Did anybody acting on behalf</p> <p>17 of the advisors review and approve this memo</p> <p>18 before it was sent to the retail funds?</p> <p>19 A. I don't know.</p> <p>20 Q. Is it your practice as the president</p> <p>21 of the advisors to have memos sent to the</p> <p>22 retail board without anybody reviewing and</p> <p>23 approving the memos on behalf of the advisors?</p> <p>24 MS. DEITSCH-PEREZ: Object to the</p> <p>25 form.</p>	<p>Page 135</p> <p>1 JAMES DONDERO</p> <p>2 THE WITNESS: I'm not aware of what</p> <p>3 standard practice was or wasn't; but again,</p> <p>4 the infrastructure for something like this</p> <p>5 would have been only at Highland.</p> <p>6 HCMFA only had portfolio managers</p> <p>7 and analysts as employees, and NexPoint</p> <p>8 pretty much only had portfolio managers and</p> <p>9 analysts as employees.</p> <p>10 The staff functions were at</p> <p>11 Highland, and Highland serviced the funds</p> <p>12 via a Shared Services Agreement that was</p> <p>13 still in place as of the date of this memo.</p> <p>14 MR. MORRIS: Okay. Can we go down</p> <p>15 to Section 2, please.</p> <p>16 MS. CANTY: (Complies with request.)</p> <p>17 BY MR. MORRIS:</p> <p>18 Q. Looking at Section 2, do you see</p> <p>19 that there's a question as to whether there are</p> <p>20 any material amounts currently payable or due</p> <p>21 in the future EG notes to –</p> <p>22 A. Yes.</p> <p>23 Q. – the Highland by HCMFA or</p> <p>24 NexPoint?</p> <p>25 A. Yes.</p>
<p>Page 136</p> <p>1 JAMES DONDERO</p> <p>2 Q. Okay. In the 53 or 54 weeks since</p> <p>3 this memo as was sent, do you know if it has</p> <p>4 been amended or modified in any way?</p> <p>5 A. I believe there was similar memos</p> <p>6 like this for this year's annual – for the</p> <p>7 2021 renewal, but I do not have – I've not</p> <p>8 seen those either; and I don't know how this</p> <p>9 answer would have changed.</p> <p>10 Q. Okay. But at least as of</p> <p>11 October 23, 2020, this is the response that the</p> <p>12 advisors gave to the retail board in response</p> <p>13 to Question Number 2, right?</p> <p>14 MS. DEITSCH-PEREZ: Object to the</p> <p>15 form.</p> <p>16 THE WITNESS: As far – as far as I</p> <p>17 know, having seen it here for the first</p> <p>18 time and not knowing whether this was the</p> <p>19 final or if there were subsequent letters</p> <p>20 and not knowing what the 2021 letter looks</p> <p>21 like, on its surface that appears so; but I</p> <p>22 have no awareness.</p> <p>23 BY MR. MORRIS:</p> <p>24 Q. Okay. And just I'll represent to</p> <p>25 you, Mr. Dondero, that I obtained this letter</p>	<p>Page 137</p> <p>1 JAMES DONDERO</p> <p>2 from counsel to the advisors in response to my</p> <p>3 specific request for the October 2020, 15-C</p> <p>4 response. So that's how – that's how I got it</p> <p>5 just so you know.</p> <p>6 A. Okay.</p> <p>7 Q. So – so were you aware in October</p> <p>8 of 2020 that NexPoint informed the retail board</p> <p>9 that as of June 30, 2020, it owed Highland and</p> <p>10 its affiliates approximately \$23.7 million?</p> <p>11 MS. DEITSCH-PEREZ: Object to the</p> <p>12 form.</p> <p>13 THE WITNESS: I was not aware.</p> <p>14 BY MR. MORRIS:</p> <p>15 Q. Does that amount comport with your</p> <p>16 recollection as to what was outstanding on the</p> <p>17 May 31, 2017, note that NexPoint gave to</p> <p>18 Highland?</p> <p>19 A. I don't have awareness.</p> <p>20 Q. Okay. Did NexPoint – do you know</p> <p>21 if NexPoint ever informed the retail board that</p> <p>22 any – any portion of that \$23.7 million was</p> <p>23 subject to any of the agreements that you</p> <p>24 entered into with the Dugaboy trustee?</p> <p>25 A. I – I don't know.</p>

<p style="text-align: right;">Page 138</p> <p>1 JAMES DONDERO</p> <p>2 Q. Did you ever instruct anybody on</p> <p>3 behalf of NexPoint to advise the retail board</p> <p>4 of the existence of the agreements?</p> <p>5 A. No, I do not believe so.</p> <p>6 Q. Do you know if anybody acting on</p> <p>7 behalf of NexPoint has ever informed the retail</p> <p>8 board that NexPoint's outstanding obligation</p> <p>9 was subject to the agreements that you entered</p> <p>10 into with the Dugaboy trustee?</p> <p>11 A. No.</p> <p>12 Q. Did you ever inform the retail</p> <p>13 boards that any portion of this \$23 million was</p> <p>14 subject to offset?</p> <p>15 A. You know what, I – let me answer</p> <p>16 that and let me also adjust the last five no</p> <p>17 answers I just rattled off.</p> <p>18 I'm thinking in the context of the</p> <p>19 time period of the date of this letter, which</p> <p>20 is October of 2020.</p> <p>21 Again, there would have been similar</p> <p>22 letters and disclosures like this and</p> <p>23 additional questions, initial requests for</p> <p>24 renewal, and then subsequent questions,</p> <p>25 probably multiple subsequent questions, given</p>	<p style="text-align: right;">Page 139</p> <p>1 JAMES DONDERO</p> <p>2 everything that's going on with the Highland</p> <p>3 bankruptcy in 2021.</p> <p>4 And I'm not aware of what those</p> <p>5 letters contain. I haven't seen those letters</p> <p>6 either, but those letters may include quite a</p> <p>7 bit of disclosure regarding the questions that</p> <p>8 you're asking me; but I don't know. But I</p> <p>9 didn't specifically instruct anybody to tell</p> <p>10 the board. I also didn't instruct anybody</p> <p>11 specifically to not tell the board.</p> <p>12 So I don't know what was told to the</p> <p>13 board for the period after October 2020.</p> <p>14 Q. Okay. I appreciate that, and I can</p> <p>15 only ask you what you know, right?</p> <p>16 And so what may or may not be in any</p> <p>17 other report is kind of irrelevant here because</p> <p>18 you haven't seen those reports, right?</p> <p>19 A. Correct.</p> <p>20 Q. Okay. And so you have no basis of</p> <p>21 knowing one way or the other whether any report</p> <p>22 delivered to the retail board after October</p> <p>23 2020 – 2020 contains anything about the</p> <p>24 agreements that you entered into with the</p> <p>25 Dugaboy trustee, correct?</p>
<p style="text-align: right;">Page 140</p> <p>1 JAMES DONDERO</p> <p>2 A. Right. I just want to be clear that</p> <p>3 my answer's saying I did not specifically</p> <p>4 instruct somebody to tell them. It doesn't</p> <p>5 mean they don't know or someone else didn't</p> <p>6 tell them.</p> <p>7 Q. Okay.</p> <p>8 A. So that's – that's a clarification</p> <p>9 I want to make.</p> <p>10 Q. Okay. No problem.</p> <p>11 And then – and then do you see that</p> <p>12 there's a report to the retail board that HCMFA</p> <p>13 had approximately \$12.3 million outstanding to</p> <p>14 Highland as of June 30, 2020?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. So just the same type of</p> <p>17 questions.</p> <p>18 Do you have any knowledge as to how</p> <p>19 that number was calculated?</p> <p>20 A. No.</p> <p>21 Q. Do you know if it includes the</p> <p>22 \$7.4 million, which is the aggregate principal</p> <p>23 amount of the two notes that HCMFA issued to</p> <p>24 Highland in May of 2019?</p> <p>25 A. I don't specifically, but given</p>	<p style="text-align: right;">Page 141</p> <p>1 JAMES DONDERO</p> <p>2 everything we have gone over in the last – I</p> <p>3 don't know. Probably.</p> <p>4 Q. Okay. Do you know whether anybody</p> <p>5 has informed the retail board on behalf of</p> <p>6 HCMFA that that \$12.3 million was overstated by</p> <p>7 \$7.4 million?</p> <p>8 A. I – I don't know.</p> <p>9 Q. Okay. Do you know whether – do you</p> <p>10 know whether anybody acting behalf of HCMFA</p> <p>11 ever told the retail boards that the</p> <p>12 \$12.3 million was subject to offset of any</p> <p>13 kind?</p> <p>14 A. I don't know, but I can't imagine</p> <p>15 the October 21 letter didn't address some of</p> <p>16 those issues because those issues I'm not sure</p> <p>17 were known at this point in time.</p> <p>18 Q. Okay. If – and we can look at</p> <p>19 paragraph 1 if it helps.</p> <p>20 But my question is whether you're</p> <p>21 aware of anybody on behalf of HCMFA ever</p> <p>22 informing the retail board in 2020 that HCMFA</p> <p>23 had claims against Highland?</p> <p>24 MS. DEITSCH-PEREZ: Object to the</p> <p>25 form.</p>

<p>Page 142</p> <p>1 JAMES DONDERO</p> <p>2 THE WITNESS: I don't know.</p> <p>3 BY MR. MORRIS:</p> <p>4 Q. Do you know whether anybody acting</p> <p>5 on behalf of either the advisors informed the</p> <p>6 retail board at any time in the year 2020 that</p> <p>7 either advisor had claims against Highland?</p> <p>8 MS. DEITSCH-PEREZ: Object to the</p> <p>9 form.</p> <p>10 THE WITNESS: I don't know.</p> <p>11 MR. MORRIS: Okay. We can take that</p> <p>12 down, please.</p> <p>13 MS. CANTY: (Complies with request.)</p> <p>14 BY MR. MORRIS:</p> <p>15 Q. Are you aware that the Court</p> <p>16 confirmed the Debtor's Fifth Amended Complaint</p> <p>17 of Reorganization in February of 2021?</p> <p>18 A. Generally.</p> <p>19 Q. And do you recall that objections to</p> <p>20 the confirmation of the plan were filed by you</p> <p>21 and each of the advisors, among others?</p> <p>22 A. Yes.</p> <p>23 Q. And do you recall that these</p> <p>24 actions, these lawsuits to collect on the</p> <p>25 notes, they were commenced before the</p>	<p>Page 143</p> <p>1 JAMES DONDERO</p> <p>2 confirmation hearing, right?</p> <p>3 A. I – I don't – I don't know.</p> <p>4 Q. All right. I'll represent to you</p> <p>5 that the lawsuits were commenced on or about</p> <p>6 January 22, and the confirmation hearing took</p> <p>7 place, I think, on February 2 and February 3,</p> <p>8 2021.</p> <p>9 Does that refresh your recollection</p> <p>10 at all that the lawsuits were known to you at</p> <p>11 the time of confirmation?</p> <p>12 MS. DEITSCH-PEREZ: Object to the</p> <p>13 form.</p> <p>14 THE WITNESS: Not specifically. I</p> <p>15 mean, given the details you just explained,</p> <p>16 I guess generally.</p> <p>17 BY MR. MORRIS:</p> <p>18 Q. Okay. I'd like to refer to you</p> <p>19 NexPoint and HCMFA and HCRE and Services</p> <p>20 collectively as the defendants for the next set</p> <p>21 of questions, okay?</p> <p>22 A. Okay.</p> <p>23 Q. And these questions are in your</p> <p>24 capacity as an individual and in your 30(b)(6)</p> <p>25 capacity, okay?</p>
<p>Page 144</p> <p>1 JAMES DONDERO</p> <p>2 Is that okay, sir?</p> <p>3 A. I'll do the best I can. If I – if</p> <p>4 I need clarity or caveats, I'll throw them out</p> <p>5 there.</p> <p>6 Q. Okay. Now, I do understand you're</p> <p>7 not a 30(b)(6) witness for HCMFA today. So</p> <p>8 let's make that clear.</p> <p>9 MS. DEITSCH-PEREZ: Thank you.</p> <p>10 BY MR. MORRIS:</p> <p>11 Q. As to HCMFA, you're just here in</p> <p>12 your individual capacity as the control person,</p> <p>13 okay?</p> <p>14 Prior to confirmation, do you know</p> <p>15 whether anyone acting on behalf of any of the</p> <p>16 defendants ever disclosed to the bankruptcy</p> <p>17 court the terms or the existence of your</p> <p>18 agreement – agreements with the Dugaboy</p> <p>19 trustee?</p> <p>20 A. I guess generally, I've testified to</p> <p>21 this already. There were numerous</p> <p>22 conversations with Seery, and I know Lynn had</p> <p>23 conversations.</p> <p>24 Q. Sir, I apologize, but I'm going to</p> <p>25 interrupt because I know you're tired; and I</p>	<p>Page 145</p> <p>1 JAMES DONDERO</p> <p>2 want to get this done. But my question had to</p> <p>3 do with the disclosure to the bankruptcy court,</p> <p>4 okay? Let me just try again.</p> <p>5 Are you aware, sir, whether any of</p> <p>6 the defendants disclosed to the bankruptcy</p> <p>7 court prior to confirmation the existence of</p> <p>8 the agreements that you entered into with the</p> <p>9 Dugaboy trustee?</p> <p>10 MS. DEITSCH-PEREZ: Object to the</p> <p>11 form and to interrupting the witness.</p> <p>12 THE WITNESS: I'll say yes.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. Okay. Did you do that?</p> <p>15 A. Yes.</p> <p>16 Q. And did you do that as part of your</p> <p>17 testimony in the hearing, or did you do it</p> <p>18 through the filing of a pleading?</p> <p>19 MS. DEITSCH-PEREZ: Object to the</p> <p>20 form.</p> <p>21 THE WITNESS: I don't – I don't</p> <p>22 know about pleadings or filings. I – I</p> <p>23 don't know.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. Do you recall what you told the</p>

<p>Page 146</p> <p>1 JAMES DONDERO</p> <p>2 bankruptcy court about the agreements that you</p> <p>3 entered into with the Dugaboy trustee?</p> <p>4 A. No. I'm not – yes. No. I'm</p> <p>5 not – no, I don't. I don't want to – I don't</p> <p>6 want to start talking and have you strike it or</p> <p>7 object. So I'll just answer specifically until</p> <p>8 you get to the question.</p> <p>9 Q. Yeah. So – so again, I'm not</p> <p>10 trying to trick you.</p> <p>11 Can you recall when you told the</p> <p>12 bankruptcy court that you had entered into will</p> <p>13 the agreements with the Dugaboy trustee?</p> <p>14 A. No.</p> <p>15 Q. Can you remember the subject matter</p> <p>16 of any hearing at which you informed the</p> <p>17 bankruptcy court about the existence of the</p> <p>18 agreements that you entered into with the</p> <p>19 Dugaboy trustee?</p> <p>20 A. I don't know where or how this works</p> <p>21 legally. But every written proposal we put</p> <p>22 forward as a solution and as a plot plan,</p> <p>23 always had a zero on all the affiliated notes</p> <p>24 as being a zero in something that was</p> <p>25 ultimately likely to be compensation.</p>	<p>Page 147</p> <p>1 JAMES DONDERO</p> <p>2 All of those settlement proposals,</p> <p>3 some were done formally through Seery; some</p> <p>4 were done indirectly; some of it were – some</p> <p>5 of them were done to the independent board;</p> <p>6 some of them were done directly to Clemente.</p> <p>7 But all of those documented the expectation</p> <p>8 that the notes were compensation.</p> <p>9 Q. Do you believe that any of the</p> <p>10 documents that you just described were ever</p> <p>11 presented to the bankruptcy court?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. When and in what context were</p> <p>14 those documents delivered to the bankruptcy</p> <p>15 court?</p> <p>16 A. I believed that the independent</p> <p>17 board and Seery were representatives of the</p> <p>18 bankruptcy court in that regard.</p> <p>19 So I think within a month, two</p> <p>20 months of the filing, there were proposals made</p> <p>21 to creditors directly and the independent</p> <p>22 board; and then subsequently, once Seery became</p> <p>23 president, to him.</p> <p>24 And then when Seery proved</p> <p>25 ineffective regarding settlements, there were</p>
<p>Page 148</p> <p>1 JAMES DONDERO</p> <p>2 reach outs – reaches out to creditors directly</p> <p>3 again and – to Clemente and the committee; but</p> <p>4 I think the committee already sold all their</p> <p>5 stuff by that point.</p> <p>6 I mean, I – listen, I – but I</p> <p>7 consider those reach-outs and characterizations</p> <p>8 of the notes as not part of settlement under</p> <p>9 the estate and that is likely to be</p> <p>10 compensation notifying the Court generally.</p> <p>11 Q. Okay. Are you aware of any notice</p> <p>12 that was ever given to Judge Jernigan about the</p> <p>13 existence of any of the agreements that you</p> <p>14 entered into with the Dugaboy trustee?</p> <p>15 A. I – I don't know.</p> <p>16 Q. Okay. You're not aware of any as</p> <p>17 you sit here right now; is that fair?</p> <p>18 A. Yes. I'm not aware if any of my</p> <p>19 reach-outs to the people that I described ever</p> <p>20 made it to Jernigan. I don't know.</p> <p>21 Q. Okay.</p> <p>22 A. I know she asked for updates on the</p> <p>23 plot plan. I know she asked for whatever, but</p> <p>24 I don't know what specificity any of the people</p> <p>25 I described presented them to her. So I don't</p>	<p>Page 149</p> <p>1 JAMES DONDERO</p> <p>2 know.</p> <p>3 Q. And I appreciate what you've said</p> <p>4 about the proposals that you've made. But my</p> <p>5 next question's very specific.</p> <p>6 Prior to the commencement of</p> <p>7 litigation, did you or anybody acting on your</p> <p>8 behalf ever tell Jim Seery or Matt Clemente of</p> <p>9 your agreements with the Dugaboy trustee?</p> <p>10 A. I – I don't know specifically.</p> <p>11 Q. Thank you very much.</p> <p>12 THE COURT REPORTER: I'm sorry.</p> <p>13 When you get to a good point, could we just</p> <p>14 take a quick break?</p> <p>15 MR. MORRIS: Yeah. Why don't we do</p> <p>16 that, and I hope to try to wrap up. So</p> <p>17 it's 5:37. I mean, I'm going to need</p> <p>18 probably, you know, another half hour or an</p> <p>19 hour; but I want to try to finish. It's</p> <p>20 5:38.</p> <p>21 I'm fine with if we just come back</p> <p>22 at 4:45 Central Time, seven minutes.</p> <p>23 THE VIDEOGRAPHER: All right. We're</p> <p>24 off record at 4:38.</p> <p>25 (Whereupon, a break was taken.)</p>

<p>Page 150</p> <p>1 JAMES DONDERO</p> <p>2 THE VIDEOGRAPHER: This is the</p> <p>3 beginning of Media Number 3 in the</p> <p>4 deposition of James Dondero. We are back</p> <p>5 on the record. The time is 4:45.</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. Just to finish up on the topic we</p> <p>8 were on when we took the break, Mr. Dondero.</p> <p>9 Prior to confirmation, do you know</p> <p>10 which of the defendants ever informed the</p> <p>11 bankruptcy court that any of the Promissory</p> <p>12 Notes that are the subject of the lawsuits were</p> <p>13 unenforceable for any reason?</p> <p>14 And when I use the phrase</p> <p>15 "bankruptcy court" here – you know what, let</p> <p>16 me ask a different question.</p> <p>17 Prior to confirmation, do you know</p> <p>18 if anybody acting on behalf of the defendants</p> <p>19 ever disclosed to Judge Jemigan that any of</p> <p>20 the Promissory Notes subject to the lawsuits</p> <p>21 were unenforceable for any reason?</p> <p>22 MS. DEITSCH-PEREZ: Object to the</p> <p>23 form.</p> <p>24 THE WITNESS: I don't know.</p> <p>25</p>	<p>Page 151</p> <p>1 JAMES DONDERO</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. Prior to confirmation, did you</p> <p>4 direct anybody to inform Judge Jemigan that</p> <p>5 any of the Promissory Notes were unenforceable</p> <p>6 for any reason?</p> <p>7 A. I don't know.</p> <p>8 Q. Okay. I want to direct your</p> <p>9 attention to December 2020.</p> <p>10 Do you recall if you had a</p> <p>11 conversation with Frank Waterhouse concerning</p> <p>12 payments that were due to Highland by any of</p> <p>13 the companies that you directly or indirectly</p> <p>14 own or control?</p> <p>15 A. I'm trying to think. Generally, we</p> <p>16 overpaid on shared services, so – by a</p> <p>17 significant amount, I believe 14, 15 million</p> <p>18 bucks. And then there was a supposed to be an</p> <p>19 overall transition settlement true-up regarding</p> <p>20 the employees, the office space, you know,</p> <p>21 whatever.</p> <p>22 So the – yeah, that's – that's the</p> <p>23 – that's my general recollection.</p> <p>24 Q. But did you give Mr. Waterhouse any</p> <p>25 instructions as to whether to pay or not pay</p>
<p>Page 152</p> <p>1 JAMES DONDERO</p> <p>2 any amounts that were due and owing to Highland</p> <p>3 under any agreement between Highland and any</p> <p>4 affiliate?</p> <p>5 MS. DEITSCH-PEREZ: Object to the</p> <p>6 form.</p> <p>7 Are you asking about the Notes or</p> <p>8 the Shared Services Agreements?</p> <p>9 MR. MORRIS: I'm asking about – I'm</p> <p>10 asking very broadly any payments.</p> <p>11 THE WITNESS: I do remember having</p> <p>12 conversations not to pay any more shared</p> <p>13 services.</p> <p>14 And I hope there weren't anymore</p> <p>15 payments on shared services. There –</p> <p>16 There was never a specific to not pay the</p> <p>17 notes.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. So your recollection is that you</p> <p>20 instructed Mr. Waterhouse not to make any</p> <p>21 further payments under the shared services, and</p> <p>22 that's the instruction you gave?</p> <p>23 A. Yes.</p> <p>24 Q. Did you ever tell anybody in</p> <p>25 December of 2020 about your conversation with</p>	<p>Page 153</p> <p>1 JAMES DONDERO</p> <p>2 Mr. Waterhouse?</p> <p>3 A. Not that I recall.</p> <p>4 Q. Do you recall telling anybody other</p> <p>5 than Mr. Waterhouse in December 2020 that no</p> <p>6 payment should be made to Highland under the</p> <p>7 Shared Services Agreement?</p> <p>8 A. I do believe there was a team – I</p> <p>9 can't remember – I know Dustin Norris is on</p> <p>10 that team. He was aware. He was aware. And</p> <p>11 as a matter of fact, I think – yeah. He – I</p> <p>12 know he was aware for sure.</p> <p>13 Q. Anybody else?</p> <p>14 A. There were other people on that</p> <p>15 team, but I can't remember who was on that team</p> <p>16 or who was in the room at any time.</p> <p>17 Q. Is there anything in writing that</p> <p>18 you recall that reflects the instruction that</p> <p>19 you gave to Mr. Waterhouse in December 2020</p> <p>20 that we're talking about?</p> <p>21 A. I believe the back-and-forth and the</p> <p>22 true-up with Seery on the multiple of things</p> <p>23 that I was just discussing, you know, right to</p> <p>24 transition of people, it included no more</p> <p>25 shared services being paid and a credit for</p>

<p>Page 154</p> <p>1 JAMES DONDERO</p> <p>2 overpayment on shared services. And those –</p> <p>3 those spreadsheets went back and forth, and</p> <p>4 Seery has copies of them also.</p> <p>5 Q. Are you aware of any payments being</p> <p>6 made by the advisors to Highland after</p> <p>7 November 30, 2020?</p> <p>8 A. Hopefully not on shared services. I</p> <p>9 believe there were payments on principal and</p> <p>10 interest on notes.</p> <p>11 Q. Were any of those payments that you</p> <p>12 have in mind made before the end of calendar</p> <p>13 year 2020 – withdrawn.</p> <p>14 Were any of those payments that you</p> <p>15 have in mind made in December 2020?</p> <p>16 A. I don't know. I don't know which</p> <p>17 ones were paid and kept current. I don't know</p> <p>18 which ones were cured. I don't – I don't</p> <p>19 remember which ones were which.</p> <p>20 Q. Are you aware of any note that was</p> <p>21 tendered by one of Highland's affiliates on</p> <p>22 which payment was made in December 2020?</p> <p>23 A. I don't know. I don't know when –</p> <p>24 I don't know which ones were kept current. I</p> <p>25 don't know which ones were cured in December.</p>	<p>Page 155</p> <p>1 JAMES DONDERO</p> <p>2 I don't know which ones were cured in January</p> <p>3 or February. I don't know.</p> <p>4 Q. Is it your testimony that you</p> <p>5 believe that one or more of Highland affiliates</p> <p>6 made a payment in December 2020 to cure – as a</p> <p>7 cure payment?</p> <p>8 MS. DEITSCH-PEREZ: Object to the</p> <p>9 form.</p> <p>10 BY MR. MORRIS:</p> <p>11 Q. I just – I'm sorry. I –</p> <p>12 A. I – I – okay.</p> <p>13 Q. Yeah. I just want to try to get</p> <p>14 this as clearly as I can. Did you –</p> <p>15 A. I believe –</p> <p>16 Q. Go ahead, sir.</p> <p>17 A. No. I'll let you go. It's better</p> <p>18 if you ask me.</p> <p>19 Q. Okay. Did you direct anybody to</p> <p>20 make any payment in December 2020 to Highland</p> <p>21 on behalf of any affiliate that you owned or</p> <p>22 controlled?</p> <p>23 A. I believe all notes are outstanding</p> <p>24 and current and in good standing. I don't know</p> <p>25 when they were cured.</p>
<p>Page 156</p> <p>1 JAMES DONDERO</p> <p>2 Q. Are you just talking about the term</p> <p>3 notes here or the demand notes as well?</p> <p>4 A. All of the above. All of the notes</p> <p>5 as far as I know.</p> <p>6 Q. Are you aware that in December 2020,</p> <p>7 Highland made a demand for payment under all of</p> <p>8 the demand notes?</p> <p>9 A. And I believe they're all current as</p> <p>10 far as interest and principal amortization. I</p> <p>11 believe they've all been cured.</p> <p>12 Q. Okay. Can you identify any payment</p> <p>13 that was made in December 2020 to Highland on</p> <p>14 behalf of yourself or any entity that you</p> <p>15 directly or indirectly own or control?</p> <p>16 A. I wouldn't have been involved in –</p> <p>17 I wouldn't have been involved in normal course</p> <p>18 payments. I know there were – I know for sure</p> <p>19 there were cure payments in January. I don't</p> <p>20 know if there were in December.</p> <p>21 Q. Okay. And that's – we'll get to</p> <p>22 January. I'm just trying to finish up</p> <p>23 December.</p> <p>24 Are you aware of any payments made</p> <p>25 in December 2020 –</p>	<p>Page 157</p> <p>1 JAMES DONDERO</p> <p>2 MS. DEITSCH-PEREZ: Object to the</p> <p>3 form.</p> <p>4 BY MR. MORRIS:</p> <p>5 Q. – by you – by you or any entity</p> <p>6 directly or indirectly owned or control by you</p> <p>7 to Highland?</p> <p>8 A. I don't have awareness.</p> <p>9 Q. Do you recall that early in 2021,</p> <p>10 Highland gave notice of default on the three</p> <p>11 term notes?</p> <p>12 A. I'm aware in – that January – yes,</p> <p>13 I guess I am aware that Highland declared them</p> <p>14 in default in January, yes.</p> <p>15 Q. And you're aware that in addition to</p> <p>16 declaring them in default, they gave notice of</p> <p>17 acceleration?</p> <p>18 A. I'm not aware of acceleration. I'm</p> <p>19 aware of, I guess, default I had heard.</p> <p>20 Q. Did you ever see the</p> <p>21 notice-of-default letters that Highland sent to</p> <p>22 NexPoint HCRE and services?</p> <p>23 A. I don't believe I've seen all of</p> <p>24 them. I think I've seen one on demand notes.</p> <p>25 I don't think I've – I don't remember seeing</p>

<p>Page 158</p> <p>1 JAMES DONDERO</p> <p>2 any on term loans.</p> <p>3 Q. All right. So as you sit here right</p> <p>4 now, you don't have a recollection of having</p> <p>5 seen the default notices that were sent by</p> <p>6 Highland in January 2021 with respect to the</p> <p>7 term notes, right?</p> <p>8 MS. DEITSCH-PEREZ: Why don't you</p> <p>9 show him one.</p> <p>10 THE WITNESS: I don't recall. Yeah.</p> <p>11 I mean, I don't – I don't recall seeing</p> <p>12 any of them.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. Okay. How did you learn that</p> <p>15 Highland had sent the default notices?</p> <p>16 A. I believe it was at a hearing I</p> <p>17 attended in person from which I called Frank,</p> <p>18 and I was surprised and annoyed that the</p> <p>19 relative de minimis amounts hadn't been paid;</p> <p>20 and I asked him what does it take to cure them</p> <p>21 or make them current.</p> <p>22 And then he told me the numbers, and</p> <p>23 they were small and de minimis; and I told him</p> <p>24 make sure they get paid and make sure the notes</p> <p>25 are cured.</p>	<p>Page 159</p> <p>1 JAMES DONDERO</p> <p>2 Q. Did you do anything or say anything</p> <p>3 else with respect to your – your learning</p> <p>4 about the declaration of default?</p> <p>5 A. No. It – no. I don't remember</p> <p>6 anything else.</p> <p>7 Q. Did you ask your – do you know</p> <p>8 whether anyone acting on behalf of ever reached</p> <p>9 out to Highland with respect to the payments</p> <p>10 that were made in January of 2021 as cure</p> <p>11 payments as you described them?</p> <p>12 A. Frank was Highland.</p> <p>13 Q. I'm asking –</p> <p>14 A. Frank – Frank – Frank was the</p> <p>15 person I reached out to at Highland. Who else</p> <p>16 would I reach out to at Highland?</p> <p>17 Q. Did you – did you reach out to</p> <p>18 anybody else?</p> <p>19 A. No. Just Frank.</p> <p>20 Q. Okay. Did anybody acting on your</p> <p>21 behalf reach out to anybody else?</p> <p>22 A. Not that I know of or not that I</p> <p>23 thought was necessary.</p> <p>24 Q. In January of 2021, did it occur to</p> <p>25 you to either communicate with or through your</p>
<p>Page 160</p> <p>1 JAMES DONDERO</p> <p>2 lawyer, with Mr. Seery, about this?</p> <p>3 MS. DEITSCH-PEREZ: Object to the</p> <p>4 form.</p> <p>5 THE WITNESS: No. I thought Frank</p> <p>6 was fully empowered.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. Okay. Did you ever confirm your</p> <p>9 understanding about the cure with</p> <p>10 Mr. Waterhouse in writing?</p> <p>11 A. In writing? No. I believe it was</p> <p>12 all in that phone conversation from the Court.</p> <p>13 I don't – I don't recall anything in writing,</p> <p>14 but I'll check.</p> <p>15 Q. Do you recall sending him an e-mail</p> <p>16 in which you confirmed with Mr. Waterhouse your</p> <p>17 understanding that the debtor had agreed that</p> <p>18 the payments that were being paid would</p> <p>19 constitute a cure?</p> <p>20 A. No, I didn't – no. At the time I</p> <p>21 didn't think it was necessary. It was – the</p> <p>22 cure amount was calculated by Frank. It was</p> <p>23 paid immediately. It was accepted. I never –</p> <p>24 I never thought to memorialize it beyond that.</p> <p>25 Q. Okay. Did you – did you ever ask</p>	<p>Page 161</p> <p>1 JAMES DONDERO</p> <p>2 your attorneys to confirm with Pachulski Stang</p> <p>3 Ziehl & Jones or anybody acting on behalf of</p> <p>4 the debtor that the payments that were made</p> <p>5 would be deemed to be cure payments?</p> <p>6 MS. DEITSCH-PEREZ: I'm going to not</p> <p>7 to disclose communications with counsel.</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. Okay. Do you know whether your</p> <p>10 lawyers or anybody acting on your behalf ever</p> <p>11 sought to confirm your understanding that the</p> <p>12 payments would be deemed to have cured the</p> <p>13 default under the three term notes?</p> <p>14 A. Not that I'm aware of.</p> <p>15 Q. Okay. Is there any written record</p> <p>16 of your call with Mr. Waterhouse?</p> <p>17 A. If it was from my cell phone, I'm</p> <p>18 sure there's a written record taking place of</p> <p>19 the call taking place.</p> <p>20 Q. Right. But did you take any notes,</p> <p>21 or is there anything in writing that</p> <p>22 memorialized or reflected your conversation</p> <p>23 with Mr. Waterhouse in January of 2021 about</p> <p>24 the cure?</p> <p>25 A. Not that I'm aware of and not that I</p>

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2 thought was necessary.

3 Q. Okay. Did – did you ever tell

4 Judge Jernigan that you had made cure payments?

5 A. I didn't know I'm allowed to have

6 ex parte conversations with her, but there's a

7 lot of things I'd like to tell her about this

8 case; but no I did not.

9 Q. All right. I'm not talking about

10 ex parte conversations, sir. Let's take

11 confirmation, for example.

12 Did you or anybody acting on any of

13 the defendants' behalf ever inform

14 Judge Jernigan that Frank Waterhouse had told

15 you that the payments in January 2021 would be

16 deemed to be cure payments?

17 A. Not that I'm aware of.

18 Q. Thank you.

19 MR. MORRIS: Give me one more

20 moment. In fact, I'm going to ask for just

21 three minutes. I'm going to check and see

22 how much more I have here. It won't be

23 long if I have anything. So let's go off

24 the record.

25 THE VIDEOGRAPHER: Would you like to

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2 MS. DEITSCH-PEREZ: Do you got it?

3 THE WITNESS: Yes.

4 BY MR. MORRIS:

5 Q. Have you seen this document before,

6 sir?

7 A. No.

8 Q. Let's go to page 15 and see if that

9 refreshes your recollection.

10 Is that your signature?

11 A. Yes.

12 MS. DEITSCH-PEREZ: Yeah. It's late

13 in the day, John.

14 THE WITNESS: Yes.

15 MR. MORRIS: That's why I showed him

16 the signature.

17 BY MR. MORRIS:

18 Q. Does that refresh your recollection

19 that you've seen this before?

20 A. No. It refreshes my recollection

21 that I signed it.

22 Q. Okay. And –

23 A. Not that I recall – not that I

24 looked at it in detail in any way.

25 Q. Okay. Did you review it before you

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1 JAMES DONDERO

2 go off the record?

3 All right. We're off record at

4 5:03.

5 (Whereupon, a break was taken.)

6 THE VIDEOGRAPHER: We are back on

7 the record. The time is 5:06.

8 MR. MORRIS: Okay. Asia, can you

9 please put on the screen Exhibit 24, which

10 are Mr. Dondero's written responses to

11 discovery?

12 MS. CANTY: (Complies with request.)

13 (Whereupon, Exhibit 24, Defendant

14 James Dondero's Objections and Responses to

15 Plaintiff's Requests for Admission,

16 Interrogatories, and Requests for

17 Production, marked for identification, as

18 of this date.)

19 BY MR. MORRIS:

20 Q. And Mr. Dondero, I don't know if you

21 have that binder in front of you, but this is

22 one of the documents that will be in there,

23 Number 24.

24 A. Number 24?

25 Q. Yes, sir.

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2 signed it?

3 A. I – as I sit here today, I don't

4 remember. So let's go through whatever

5 questions you have.

6 Q. Okay.

7 MR. MORRIS: Go to page 8, please.

8 MS. CANTY: (Complies with request.)

9 BY MR. MORRIS:

10 Q. You will see that Interrogatories 3

11 and 4 ask in substance for you to admit that

12 you never disclosed the terms or existence of

13 the agreement to Frank Waterhouse prior to the

14 commencement of the adversary proceeding.

15 Do you see that?

16 MS. DEITSCH-PEREZ: Wait. Object to

17 the form. Those are two different

18 requests.

19 MR. MORRIS: Okay. Okay. I was

20 trying to do this quickly. We'll do it –

21 we'll do it – we'll do it your way?

22 MS. DEITSCH-PEREZ: No. I think you

23 – okay.

24 BY MR. MORRIS:

25 Q. So let's look at Request for

<p>Page 166</p> <p>1 JAMES DONDERO</p> <p>2 Admission Number 3.</p> <p>3 Do you see that Highland asked you</p> <p>4 to admit, quote, "that prior to the</p> <p>5 commencement of the adversary proceeding, you</p> <p>6 never disclosed the terms of the agreement to</p> <p>7 Frank Waterhouse," close quote?</p> <p>8 A. That's on page 8, Number 3, right?</p> <p>9 Q. Correct. And you denied that,</p> <p>10 correct?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Did you disclose the terms of</p> <p>13 the agreement as we've defined that term to</p> <p>14 Frank Waterhouse prior to the commencement of</p> <p>15 the adversary proceeding?</p> <p>16 A. You know, what I've answered was a</p> <p>17 long answer earlier that the notes were</p> <p>18 compensation. The notes were to be – would be</p> <p>19 forgiven as part of compensation, shouldn't be</p> <p>20 included in any settlement.</p> <p>21 Frank and his group were deeply</p> <p>22 involved in all the plot plan and settlement,</p> <p>23 things that went back and forth. He knew.</p> <p>24 Now, whether he knew the specifics</p> <p>25 of the agreement in terms of, whether I ever</p>	<p>Page 167</p> <p>1 JAMES DONDERO</p> <p>2 discussed the MGM Cornerstone, Trustway, and</p> <p>3 the specifics of the agreement with him before,</p> <p>4 I don't – I don't know. So...</p> <p>5 Q. Do you –</p> <p>6 A. I think denying is appropriate, but</p> <p>7 I'm at not saying Frank knew the specifics of</p> <p>8 the agreement prior to the commencement of</p> <p>9 litigation.</p> <p>10 Q. Did you tell him that you had an</p> <p>11 agreement with the Dugaboy trustee?</p> <p>12 A. I told him there were mechanisms for</p> <p>13 forgiving the – or there were – there were</p> <p>14 mechanisms for the notes being compensation and</p> <p>15 not being part of any kind of cement or asset</p> <p>16 to the estate.</p> <p>17 Q. Okay. Do you recall telling him</p> <p>18 anything else during these conversations?</p> <p>19 A. No, I didn't – no. I didn't feel</p> <p>20 it necessary to talk to him about the</p> <p>21 specifics.</p> <p>22 Q. Okay. And do you recall having this</p> <p>23 discussion in any context other than in</p> <p>24 connection with the preparation of a settlement</p> <p>25 proposal?</p>
<p>Page 168</p> <p>1 JAMES DONDERO</p> <p>2 A. There wasn't another reason – there</p> <p>3 – no, I don't remember any other context.</p> <p>4 Q. Okay.</p> <p>5 A. But the settlements were regular and</p> <p>6 ongoing –</p> <p>7 Q. Okay.</p> <p>8 A. – in our mind, not in the</p> <p>9 Stonehill's mind.</p> <p>10 Q. Okay. Can you go – can we go to</p> <p>11 page 9, Request for Admission Number 8?</p> <p>12 A. Yes.</p> <p>13 Q. Number 8 we asked you to "admit that</p> <p>14 no document was created prior to the</p> <p>15 commencement of the adversary proceeding</p> <p>16 concerning the existence of the agreement."</p> <p>17 Have I read that right –</p> <p>18 A. I'm just reading what's on page 9,</p> <p>19 admit that prior to the agreement he never</p> <p>20 disclosed any other creditor.</p> <p>21 Q. No, no, no. I'm sorry. We're on</p> <p>22 Number 8.</p> <p>23 Can you read Number 8 out loud?</p> <p>24 A. Number 8, I'm sorry. Admit that no</p> <p>25 document was created prior to the commencement</p>	<p>Page 169</p> <p>1 JAMES DONDERO</p> <p>2 of the adversary proceeding concerning the</p> <p>3 existence of the agreement.</p> <p>4 Q. All right. So you've read that.</p> <p>5 And so my question to you is: Did you deny</p> <p>6 that because there are settlement proposals</p> <p>7 that you created that show zero value for the</p> <p>8 Promissory Notes at issue?</p> <p>9 A. Yes, partly.</p> <p>10 Q. Okay. What other documents were</p> <p>11 created prior to the commencement of the</p> <p>12 adversary proceeding that you contend concerned</p> <p>13 the existence of the agreement?</p> <p>14 A. I'm trying to think if the LPA does.</p> <p>15 Q. Okay. Anything else?</p> <p>16 A. No. That would be – that would be</p> <p>17 it.</p> <p>18 Q. Okay. Request for Admission</p> <p>19 Number 9, can you identify the creditor that</p> <p>20 caused you to deny the Request for Admission</p> <p>21 Number 9?</p> <p>22 A. I believe all the creditors via the</p> <p>23 settlement agreements; but, you know,</p> <p>24 specifically Clubock, you know, and to the</p> <p>25 extent Frank is a creditor, Frank.</p>

<p>Page 170</p> <p>1 JAMES DONDERO</p> <p>2 Q. But you just testified a few minutes</p> <p>3 ago, I thought, that you didn't specifically</p> <p>4 tell Mr. Waterhouse of the terms of the</p> <p>5 agreements to him, right? Did I miss –</p> <p>6 A. That's right. I mean, not the</p> <p>7 specific terms, correct.</p> <p>8 Q. Okay. So is there any creditor to</p> <p>9 whom you – is there any creditor of Highland's</p> <p>10 to whom you disclosed the existence of the</p> <p>11 agreements that you entered into with the</p> <p>12 Dugaboy trustee prior to the commencement of</p> <p>13 the adversary proceeding?</p> <p>14 MS. DEITSCH-PEREZ: Asked and</p> <p>15 answered.</p> <p>16 THE WITNESS: Yeah. I mean,</p> <p>17 generally, all the creditors via the</p> <p>18 settlement. And then we have lots of</p> <p>19 one-off conversations with Clubock</p> <p>20 representing UBS where the notes were</p> <p>21 described as going to be forgiven</p> <p>22 compensation, never part of the estate.</p> <p>23 BY MR. MORRIS:</p> <p>24 Q. All right. I don't – I don't want</p> <p>25 to wrestle with you.</p>	<p>Page 171</p> <p>1 JAMES DONDERO</p> <p>2 A. Sure.</p> <p>3 Q. I'm going to remind you that when I</p> <p>4 use the word "agreements," I'm referring</p> <p>5 specifically to the agreements that were set</p> <p>6 forth in paragraph 82 of your answer.</p> <p>7 Do you understand that?</p> <p>8 A. Yes. And so I guess my answer is</p> <p>9 generally but not specifically.</p> <p>10 Q. Okay. And when you say "generally,"</p> <p>11 you don't mean that you disclosed the existence</p> <p>12 or terms of the agreement to any creditor.</p> <p>13 What you mean is that you told all of the</p> <p>14 creditors that you believed that the notes</p> <p>15 should be forgiven as part of compensation.</p> <p>16 Do I have that right?</p> <p>17 A. Well, that they would be forgiven as</p> <p>18 part of compensation.</p> <p>19 Q. Okay. Subject to that correction,</p> <p>20 are we on the same page now?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Can we go to page 12,</p> <p>23 Interrogatory Number 2?</p> <p>24 A. This is still in Section 24?</p> <p>25 Q. Yes, sir.</p>
<p>Page 172</p> <p>1 JAMES DONDERO</p> <p>2 MS. DEITSCH-PEREZ: Object to the</p> <p>3 form.</p> <p>4 THE WITNESS: 24, I'm sorry.</p> <p>5 Page 2?</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. Page 12.</p> <p>8 A. Page 12. Yes. Which one?</p> <p>9 Q. Number 2.</p> <p>10 A. All right.</p> <p>11 Q. You didn't identify any email</p> <p>12 correspondence in response to Interrogatory</p> <p>13 Number 2; is that correct?</p> <p>14 A. I don't have my e-mails. So we have</p> <p>15 painfully little from the Highland estate.</p> <p>16 Q. Okay.</p> <p>17 A. I think at the time we responded, we</p> <p>18 thought we might get access to things; but we</p> <p>19 haven't been able to come up with anything. We</p> <p>20 have – we have no access to anything.</p> <p>21 Q. Okay. So as you sit here today, you</p> <p>22 cannot identify any e-mail correspondence that</p> <p>23 discusses the existence of the agreement,</p> <p>24 correct?</p> <p>25 A. Not yet, no.</p>	<p>Page 173</p> <p>1 JAMES DONDERO</p> <p>2 (Whereupon, Exhibit 27, Defendant</p> <p>3 NexPoint Advisors, L.P.'s Objections and</p> <p>4 Responses to Plaintiff's Requests for</p> <p>5 Admission, Interrogatories, and Requests</p> <p>6 for Production, marked for identification,</p> <p>7 as of this date.)</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. Let's go to Exhibit Number 27.</p> <p>10 A. Yes.</p> <p>11 Q. And if we can go to page 7.</p> <p>12 MR. MORRIS: I think – I don't know</p> <p>13 who's shuffling paper.</p> <p>14 BY MR. MORRIS:</p> <p>15 Q. But if we're at page 7, we're</p> <p>16 looking at Interrogatory Number 3.</p> <p>17 Is the reason for the denial – and</p> <p>18 I apologize. I may be going too quickly</p> <p>19 because I know we're all anxious to finish, but</p> <p>20 I do want to represent to you that we're</p> <p>21 looking at the discovery responses of NexPoint</p> <p>22 Advisors.</p> <p>23 A. Right.</p> <p>24 Q. And if we went to page 12, we'd find</p> <p>25 your signature on that one, okay? So looking</p>

<p>Page 174</p> <p>1 JAMES DONDERO</p> <p>2 at –</p> <p>3 A. Yes.</p> <p>4 Q. – Request for Admission Number 3,</p> <p>5 is your answer the same on behalf of NexPoint</p> <p>6 Advisors as it was for yourself as to why you</p> <p>7 denied Request for Admission Number 3?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. If we can go to Request for</p> <p>10 Admission Number 6, that is the same Request</p> <p>11 for Admission that we talked about with respect</p> <p>12 to yourself in your individual capacity a</p> <p>13 moment ago.</p> <p>14 Is your reason for denying Request</p> <p>15 for Admission Number 6 the same reason that you</p> <p>16 gave for yourself?</p> <p>17 A. Yes.</p> <p>18 Q. And looking at Request for</p> <p>19 Admissions Number 7 and 8, is the reason that</p> <p>20 you denied those Requests for Admissions</p> <p>21 because you told Seery and the committee and</p> <p>22 Clubock that you wouldn't pay anything for the</p> <p>23 notes because they were supposed to be forgiven</p> <p>24 as part of your compensation?</p> <p>25 A. And the independent board, yes.</p>	<p>Page 175</p> <p>1 JAMES DONDERO</p> <p>2 Q. Okay. Is there any other reason</p> <p>3 that you denied Request for Admissions Number 7</p> <p>4 and 8?</p> <p>5 A. Not that I can think of at this</p> <p>6 point in time.</p> <p>7 I don't think the LPA applies much</p> <p>8 here, but I may be –</p> <p>9 MR. MORRIS: All right. I have no</p> <p>10 further questions.</p> <p>11 THE WITNESS: Wonderful. Thank you.</p> <p>12 Have a good evening.</p> <p>13 MR. MORRIS: Thank you. Take care.</p> <p>14 MS. DEITSCH-PEREZ: Thank you.</p> <p>15 MR. MORRIS: Bye now.</p> <p>16 THE VIDEOGRAPHER: All right. If</p> <p>17 there are no further questions, this</p> <p>18 concludes today's deposition. Volume II</p> <p>19 [sic] consists of three media. We are off</p> <p>20 the record at 5:21 p.m.</p> <p>21 THE COURT REPORTER: Everybody is</p> <p>22 leaving, and I wanted to get everybody's</p> <p>23 order on the record.</p> <p>24 MS. DEITSCH-PEREZ: I'd like the</p> <p>25 rough. And then the regular can be</p>
<p>Page 176</p> <p>1 JAMES DONDERO</p> <p>2 whenever you get the regular done. No</p> <p>3 special rush.</p> <p>4 THE COURT REPORTER: Okay. Thank</p> <p>5 you.</p> <p>6 MS. DEITSCH-PEREZ: You're welcome.</p> <p>7 THE COURT REPORTER: Ms. Canty, I</p> <p>8 think there's a standing order for a daily</p> <p>9 delivery – or an immediate delivery for</p> <p>10 your firm?</p> <p>11 MS. CANTY: Yes.</p> <p>12 THE COURT REPORTER: Okay. I just</p> <p>13 wanted to confirm that. I'll get that out</p> <p>14 tonight, then.</p> <p>15 MS. CANTY: Okay, thank you.</p> <p>16 (The witness is excused.)</p> <p>17 (Deposition of James Dondero</p> <p>18 concluded at 5:21 p.m. CDT.)</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 177</p> <p>1 C E R T I F I C A T E</p> <p>2</p> <p>3</p> <p>4 I, SUZANNE J. STOTZ, a Certified</p> <p>5 Shorthand Reporter, Registered Professional</p> <p>6 Reporter, Certified Realtime Reporter, and</p> <p>7 Notary Public in and for the State of Texas, do</p> <p>8 hereby certify that the foregoing is a true and</p> <p>9 accurate transcript of the stenographic</p> <p>10 above-captioned matter.</p> <p>11</p> <p>12</p> <p>13</p> <p>14 SUZANNE J. STOTZ, CSR, RPR, CRR</p> <p>15 Texas Certification No. 11942</p> <p>16</p> <p>17</p> <p>18 DATED: November 4, 2021</p> <p>19</p> <p>20</p> <p>21 NOTE: THE CERTIFICATE APPENDED TO THIS</p> <p>22 TRANSCRIPT DOES NOT APPLY TO ANY REPRODUCTION</p> <p>23 OF THE SAME BY ANY MEANS, UNLESS UNDER THE</p> <p>24 DIRECT CONTROL AND/OR DIRECTION OF THE</p> <p>25 CERTIFYING COURT REPORTER.</p>

1 E R R A T A S H E E T

2 I have read my testimony in the foregoing

3 transcript and believe it to be true and

4 correct to the best of my knowledge and belief

5 with the following changes:

6 PAGE LINE CHANGE

7 _____

8 _____

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17

18 _____

19 WITNESS SIGNATURE DATE

20

21 Sworn and subscribed to before me this

22 ____ day of _____, 2021.

23

24 Notary Public of the

25 State of _____.

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EXHIBIT 105

1 WATERHOUSE - 10-19-21
2 IN THE UNITED STATES BANKRUPTCY COURT
3 FOR THE NORTHERN DISTRICT OF TEXAS
4 DALLAS DIVISION

5 -----
6 IN RE:

7 Chapter 11
8 HIGHLAND CAPITAL
9 MANAGEMENT, L.P., CASE NO.
10 19-34054-SGI11

11 Debtor.
12 -----

13 HIGHLAND CAPITAL MANAGEMENT, L.P.,
14

15 Plaintiff,
16

17 vs. Adversary
18 Proceeding No.
19 HIGHLAND CAPITAL MANAGEMENT 21-03000-SGI
20 FUND ADVISORS, L.P.; NEXPOINT
21 ADVISORS, L.P.; HIGHLAND
22 INCOME FUND; NEXPOINT
23 STRATEGIC OPPORTUNITIES FUND;
24 NEXPOINT CAPITAL, INC.; and
25 CLO HOLDCO, LTD.,

Defendants.

16

17 REMOTE VIDEOTAPED DEPOSITION OF

18 FRANK WATERHOUSE

19 October 19, 2021
20
21
22
23

24 Reported by: Susan S. Klinger, RMR-CRR, CSR

25 Job No: 201195

<p>1 WATERHOUSE - 10-19-21</p> <p>2</p> <p>3</p> <p>4 October 19, 2021</p> <p>5 9:30 a.m.</p> <p>6</p> <p>7</p> <p>8</p> <p>9 Remote Deposition of FRANK WATERHOUSE,</p> <p>10 held before Susan S. Klinger, a Registered</p> <p>11 Merit Reporter and Certified Realtime Reporter</p> <p>12 of the State of Texas.</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 2</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A P P E A R A N C E S:</p> <p>3 (All appearances via Zoom.)</p> <p>4 Attorneys for the Reorganized Highland Capital</p> <p>5 Management:</p> <p>6 John Morris, Esq.</p> <p>7 Hayley Winograd, Esq.</p> <p>8 PACHULSKI STANG ZIEHL & JONES</p> <p>9 780 Third Avenue</p> <p>10 New York, New York 10017</p> <p>11 Attorneys for the Witness:</p> <p>12 Debra Dandeneau, Esq.</p> <p>13 Michelle Hartmann, Esq.</p> <p>14 BAKER MCKENZIE</p> <p>15 1900 North Pearl Street</p> <p>16 Dallas, Texas 75201</p> <p>17 Attorneys for NexPoint Advisors, LP and</p> <p>18 Highland Capital Management Fund Advisors,</p> <p>19 L.P.:</p> <p>20 Davor Rukavina, Esq.</p> <p>21 An Nguyen, Esq.</p> <p>22 MUNSCH HARDT KOPF & HARDD</p> <p>23 500 North Akard Street</p> <p>24 Dallas, Texas 75201-6659</p> <p>25</p>
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<p>Page 8</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 here, as we did yesterday. If anybody has</p> <p>3 a problem with what was just stated, can</p> <p>4 you state your objection now?</p> <p>5 Okay. No response, so everybody</p> <p>6 accepts the stipulation and the instruction</p> <p>7 that was just given.</p> <p>8 VIDEOGRAPHER: Thank you. This is</p> <p>9 the start of media labeled Number 1 of the</p> <p>10 video recorded deposition of Frank</p> <p>11 Waterhouse In Re: Highland Capital</p> <p>12 Management, L.P., in the United States</p> <p>13 Bankruptcy Court for the Northern District</p> <p>14 of Texas, Dallas Division, Case Number</p> <p>15 21-03000-SGI.</p> <p>16 This deposition is being held via</p> <p>17 video conference with participants</p> <p>18 appearing remotely due to COVID-19</p> <p>19 restrictions on Tuesday, October 19th, 2021</p> <p>20 at approximately 9:32 a.m. My name is</p> <p>21 Scott Hatch, legal video specialist with</p> <p>22 TSG Reporting, Inc. headquartered at 228</p> <p>23 East 45th Street, New York, New York. The</p> <p>24 court reporter is Susan Klinger in</p> <p>25 association with TSG Reporting.</p>	<p>Page 9</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Counsel, please introduce</p> <p>3 yourselves.</p> <p>4 MR. MORRIS: John Morris, Pachulski</p> <p>5 Stang Ziehl & Jones for the reorganized</p> <p>6 Highland Capital Management, L.P., the</p> <p>7 plaintiff in these actions.</p> <p>8 MS. DANDENEAU: Deborah Dandeneau</p> <p>9 from Baker McKenzie. My partner, Michelle</p> <p>10 Hartmann, is also in the room with me,</p> <p>11 representing Frank Waterhouse individually.</p> <p>12 MS. DEITSCH-PEREZ: Deborah</p> <p>13 Deitsch-Perez from Stinson, LLP,</p> <p>14 representing Jim Dondero, Nancy Dondero,</p> <p>15 HCRA, and HCMS.</p> <p>16 MR. HORN: Warren Horn with Heller,</p> <p>17 Draper & Horn in New Orleans representing</p> <p>18 Dugaboy Investment Trust.</p> <p>19 MR. RUKAVINA: Davor Rukavina with</p> <p>20 Munsch Hardt Kopf & Harr in Dallas</p> <p>21 representing NexPoint Advisors, LP and</p> <p>22 Highland Capital Management Fund Advisors,</p> <p>23 L.P.</p> <p>24 MR. AIGEN: Michael Aigen from</p> <p>25 Stinson, and I represent the same parties</p>

<p>Page 10</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 as Deborah Deitsch-Perez.</p> <p>3 MS. NEWMAN: This is Deborah Newman</p> <p>4 from Quinn Emanuel. We represent the</p> <p>5 litigation – Marc Kirschner as the trustee</p> <p>6 for the litigation SunTrust.</p> <p>7 MR. MORRIS: I think that is</p> <p>8 everybody.</p> <p>9 VIDEOGRAPHER: Thank you. Will the</p> <p>10 court reporter please swear in the witness.</p> <p>11 FRANK WATERHOUSE,</p> <p>12 having been first duly sworn, testified as</p> <p>13 follows:</p> <p>14 EXAMINATION</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. Please state your name for the</p> <p>17 record.</p> <p>18 A. My name is Frank Waterhouse.</p> <p>19 Q. Good morning, Mr. Waterhouse. I'm</p> <p>20 John Morris, as you know, from Pachulski Stang</p> <p>21 Ziehl & Jones. You understand that my firm and</p> <p>22 I represent Highland Capital Management, L.P.;</p> <p>23 is that right?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And do you understand that</p>	<p>Page 11</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 we're here today for your deposition in your</p> <p>3 individual capacity?</p> <p>4 A. Yes.</p> <p>5 Q. Did you review and – did you</p> <p>6 receive and review a subpoena that Highland</p> <p>7 Capital Management, L.P., served upon you?</p> <p>8 A. Yes.</p> <p>9 Q. You have been deposed before; right?</p> <p>10 A. Yes.</p> <p>11 Q. How many times have you been</p> <p>12 deposed?</p> <p>13 A. About three or four times.</p> <p>14 Q. Okay. And I defended you in one</p> <p>15 deposition; isn't that right?</p> <p>16 A. That is correct.</p> <p>17 Q. So the general ground rules for this</p> <p>18 deposition are largely the same as the</p> <p>19 depositions you have given before. And that is</p> <p>20 I will ask you a series of questions, and it is</p> <p>21 important that you allow me to finish my</p> <p>22 question before you begin your answer; is that</p> <p>23 fair?</p> <p>24 A. Yes.</p> <p>25 Q. And it is important that I allow you</p>
<p>Page 12</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 to finish your answers before I begin a</p> <p>3 question, but if I fail to do that, will you</p> <p>4 let me know?</p> <p>5 A. I can certainly do that.</p> <p>6 Q. Okay. Do you understand that this</p> <p>7 deposition is being videotaped?</p> <p>8 A. Yes.</p> <p>9 Q. You understand that I may seek to</p> <p>10 use portions of the videotape in a court of</p> <p>11 law?</p> <p>12 A. I did not know that, until you just</p> <p>13 said that.</p> <p>14 Q. Okay. And you are aware of that now</p> <p>15 before the deposition begins substantively; is</p> <p>16 that right?</p> <p>17 A. Yes.</p> <p>18 Q. So unlike I think the other</p> <p>19 depositions that you have given, this one is</p> <p>20 being given remotely. So that presents some</p> <p>21 unique challenges, at least as compared to a</p> <p>22 deposition that is taken in-person.</p> <p>23 From time to time we're going to put</p> <p>24 documents up on the screen, Mr. Waterhouse.</p> <p>25 And it is important that I give you the</p>	<p>Page 13</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 opportunity to review any portion of the</p> <p>3 document that you think you need in order to</p> <p>4 fully and completely answer the question.</p> <p>5 So I would ask you to let me know if</p> <p>6 there is a portion of a document that you need</p> <p>7 to see in order to fully and completely answer</p> <p>8 the question. Can you do that for me?</p> <p>9 A. Yes.</p> <p>10 MS. DANDENEAU: Mr. Morris, I would</p> <p>11 just note that we do have hard copies of</p> <p>12 the documents that you sent, so if you can</p> <p>13 just refer to the exhibit number as</p> <p>14 reflected in the documents that you sent,</p> <p>15 Mr. Waterhouse will be able to look at the</p> <p>16 hard copies of those documents.</p> <p>17 MR. MORRIS: I appreciate that,</p> <p>18 and – and I will encourage him to do so.</p> <p>19 There will be other documents that we did</p> <p>20 not send to you that we'll be using today</p> <p>21 though.</p> <p>22 Q. Okay. With that as background, if</p> <p>23 there is anything that I ask you, sir, that you</p> <p>24 don't understand, will you let me know?</p> <p>25 A. Yes.</p>

<p>Page 14</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. Are you currently employed?</p> <p>3 A. Yes.</p> <p>4 Q. By whom?</p> <p>5 A. The Skyview Group.</p> <p>6 Q. When did you become employed by the</p> <p>7 Skyview Group?</p> <p>8 A. I believe March 1st of 2021.</p> <p>9 Q. Do you have a title at Skyview?</p> <p>10 A. Yes.</p> <p>11 Q. What is your title?</p> <p>12 A. My title is chief financial officer.</p> <p>13 Q. Do you report to anybody in your</p> <p>14 role as CFO?</p> <p>15 A. I don't, no.</p> <p>16 Q. No. Is there a president or a CEO</p> <p>17 of Skyview?</p> <p>18 A. Yes.</p> <p>19 Q. Who is that?</p> <p>20 A. That is Scott Ellington.</p> <p>21 Q. But you don't report to</p> <p>22 Mr. Ellington; is that right?</p> <p>23 A. I don't think so.</p> <p>24 Q. Does Skyview Group –</p> <p>25 MS. DANDENEAU: Excuse me, we –</p>	<p>Page 15</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I – I – I might. I just – I</p> <p>3 don't recall.</p> <p>4 Q. Okay. Does Skyview Group provide</p> <p>5 any services to any entity directly or</p> <p>6 indirectly owned or controlled by Jim Dondero?</p> <p>7 A. Yes.</p> <p>8 Q. Can you name – is that pursuant to</p> <p>9 written contracts?</p> <p>10 A. Yes.</p> <p>11 Q. And do you know how many contracts</p> <p>12 exist?</p> <p>13 A. Approximately six or so.</p> <p>14 Q. And is the Skyview Group made up of</p> <p>15 individuals who were formerly employees of</p> <p>16 Highland Capital Management, L.P.?</p> <p>17 A. No.</p> <p>18 Q. Do you know how many – how many –</p> <p>19 how many employees does Skyview have?</p> <p>20 A. Approximately 35.</p> <p>21 Q. And can you tell me how many of</p> <p>22 those 35 are former officers, directors, or</p> <p>23 employees of Highland Capital Management, L.P.?</p> <p>24 A. I don't know the exact number.</p> <p>25 Q. Is it more than 20?</p>
<p>Page 16</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes.</p> <p>3 Q. Is it more than 30?</p> <p>4 A. I don't know.</p> <p>5 Q. Can you tell me what portion of</p> <p>6 Skyview – Skyview's revenue is derived from</p> <p>7 entities that are directly or indirectly owned</p> <p>8 or controlled by Jim Dondero?</p> <p>9 MS. DANDENEAU: Mr. Morris, I mean,</p> <p>10 you called Mr. Waterhouse here individually</p> <p>11 for purposes of his testimony in connection</p> <p>12 with the noticed litigation. I have given</p> <p>13 you some leeway to ask him some background</p> <p>14 information about Skyview Group, but this</p> <p>15 is not a substitute for a deposition in</p> <p>16 connection with any other pending disputes</p> <p>17 that exist. And – and we agreed to accept</p> <p>18 the subpoena on the basis of he – this is</p> <p>19 testimony that he is giving in connection</p> <p>20 with the noticed litigation.</p> <p>21 I really think that you are now</p> <p>22 going a little bit far afield from the</p> <p>23 purpose of this deposition.</p> <p>24 MR. MORRIS: Okay. It is – I'm not</p> <p>25 intending to use these – the answers to</p>	<p>Page 17</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 these questions for any purpose other than</p> <p>3 this litigation. I think you understand</p> <p>4 fully why I'm asking the questions, and I</p> <p>5 just have a couple more, if you will bear</p> <p>6 with me.</p> <p>7 MS. DANDENEAU: Okay.</p> <p>8 MS. DEITSCH-PEREZ: Can we have an</p> <p>9 agreement that an objection by one is an</p> <p>10 objection for any other party here?</p> <p>11 MR. MORRIS: Sure. I would – I</p> <p>12 would encourage that, sure.</p> <p>13 MS. DEITSCH-PEREZ: Thank you.</p> <p>14 MR. MORRIS: It can't be sustained</p> <p>15 or overruled more than one time, so...</p> <p>16 Q. Mr. Waterhouse, can you answer my</p> <p>17 question, please.</p> <p>18 MS. DANDENEAU: Do you want to</p> <p>19 repeat it, Mr. Morris, for his benefit?</p> <p>20 MR. MORRIS: Sure.</p> <p>21 Q. Can you – can you tell me the</p> <p>22 approximate portion of Skyview's revenue that</p> <p>23 is derived from entities that are directly or</p> <p>24 indirectly owned or controlled by Mr. Dondero?</p> <p>25 A. I don't know the exact number.</p>

<p>Page 18</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Is it more than 75 percent?</p> <p>3 A. Yes.</p> <p>4 Q. Is it more than 90 percent?</p> <p>5 A. I don't know.</p> <p>6 Q. Okay. Can I refer to Highland</p> <p>7 Capital Management, L.P., as Highland?</p> <p>8 A. Yes.</p> <p>9 Q. All right. And you previously</p> <p>10 served as Highland's CFO; correct?</p> <p>11 A. Yes.</p> <p>12 Q. When did you join Highland?</p> <p>13 A. I don't recall the exact date.</p> <p>14 Q. Can you tell me what year?</p> <p>15 A. 2006.</p> <p>16 Q. When did you -- in what year did you</p> <p>17 become Highland's CFO?</p> <p>18 A. I don't recall the exact date.</p> <p>19 Q. I'm not asking you for the exact</p> <p>20 date. I'm asking you if you recall the year in</p> <p>21 which you were appointed CFO.</p> <p>22 A. I don't recall the exact year.</p> <p>23 Q. Can you tell me which years it is</p> <p>24 possible that you were appointed to CFO of</p> <p>25 Highland?</p>	<p>Page 19</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. 2011 or 2012.</p> <p>3 Q. Did you serve as Highland's CFO on a</p> <p>4 continuous basis from in or around 2011 or 2012</p> <p>5 until early 2021?</p> <p>6 A. Yes.</p> <p>7 Q. During that entire time you reported</p> <p>8 directly to Jim Dondero; correct?</p> <p>9 A. I -- I don't know.</p> <p>10 Q. Is there anybody else you reported</p> <p>11 to -- withdrawn.</p> <p>12 Did you report to Mr. Dondero for</p> <p>13 some portion of the time that you served as</p> <p>14 CFO?</p> <p>15 A. Yes.</p> <p>16 Q. Is there a portion of time that you</p> <p>17 don't recall who you reported to?</p> <p>18 A. Yes.</p> <p>19 Q. What portion of time do you have in</p> <p>20 your mind when you can't recall who you</p> <p>21 reported to?</p> <p>22 A. From the 2011 to -- for</p> <p>23 approximately a year or two.</p> <p>24 Q. Okay. So is it fair to say that you</p> <p>25 reported to Mr. Dondero in your capacity as CFO</p>
<p>Page 20</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 from at least 2014 until the time you left</p> <p>3 Highland?</p> <p>4 MS. DANDENEAU: Objection to form.</p> <p>5 A. I don't want to speculate the exact</p> <p>6 or what year that changed or -- so I would like</p> <p>7 to stick with my testimony.</p> <p>8 Q. Can you recall when you began</p> <p>9 reporting to Mr. Dondero?</p> <p>10 A. I don't recall.</p> <p>11 Q. Can you -- can you give me an</p> <p>12 estimate of what year you think you might have</p> <p>13 began reporting to Mr. Dondero?</p> <p>14 A. I will go back to my prior</p> <p>15 testimony.</p> <p>16 Q. Okay. There is no -- you have no</p> <p>17 ability to tell me when you began reporting to</p> <p>18 Mr. Dondero.</p> <p>19 Do I have that right?</p> <p>20 MS. DANDENEAU: Objection to form.</p> <p>21 A. I don't recall.</p> <p>22 Q. Okay. Do you recall who you might</p> <p>23 have reported to before you began reporting to</p> <p>24 Mr. Dondero?</p> <p>25 A. Yes.</p>	<p>Page 21</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Who might you have reported to in</p> <p>3 your capacity as CFO before you started</p> <p>4 reporting to Mr. Dondero?</p> <p>5 A. That would have been Patrick Boyce.</p> <p>6 Q. Are you aware that Highland filed</p> <p>7 for bankruptcy on October 19th, 2019?</p> <p>8 A. Yes.</p> <p>9 Q. And we refer to that as the petition</p> <p>10 date?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Do you hold any professional</p> <p>13 licenses, sir?</p> <p>14 A. Yes.</p> <p>15 Q. Can you tell me what professional</p> <p>16 licenses you hold?</p> <p>17 A. I'm a certified public accountant.</p> <p>18 Q. Okay. Anything else?</p> <p>19 A. No.</p> <p>20 Q. Do you have any other professional</p> <p>21 licenses or certificates?</p> <p>22 A. When you say "professional license,"</p> <p>23 that is not education?</p> <p>24 Q. Tell me -- sure. Anything other</p> <p>25 than a driver's license.</p>

<p>Page 22</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Do you have any other license or</p> <p>3 certificate or certification?</p> <p>4 A. Are you asking, like, where I went</p> <p>5 to school and the –</p> <p>6 Q. I am not. I am not. I didn't say</p> <p>7 education. I didn't ask about degrees.</p> <p>8 Do you know what a license is?</p> <p>9 A. Well, yeah, I mean, a license is</p> <p>10 something you get after you receive a certain</p> <p>11 level of proficiency.</p> <p>12 Q. Do you have any licenses or</p> <p>13 certifications other than your CPA?</p> <p>14 MS. DANDENEAU: Objection, form.</p> <p>15 I assume you mean professional</p> <p>16 licenses, Mr. Morris; correct?</p> <p>17 Q. Can you answer my question, sir?</p> <p>18 A. Mr. Morris, I'm thinking. I</p> <p>19 don't – I don't think I have any others.</p> <p>20 Q. Are you familiar with an entity</p> <p>21 called Highland Capital Management Fund</p> <p>22 Advisors?</p> <p>23 A. Yes.</p> <p>24 Q. Were you ever – can we refer to</p> <p>25 that entity as HCMFA?</p>	<p>Page 23</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes.</p> <p>3 Q. Were you ever employed by HCMFA?</p> <p>4 A. Not that I recall.</p> <p>5 Q. Were you ever – did you ever hold</p> <p>6 the title of an officer or director of HCMFA?</p> <p>7 A. Yes.</p> <p>8 Q. What title did you hold?</p> <p>9 A. Treasurer.</p> <p>10 Q. When did you become the treasurer of</p> <p>11 HCMFA?</p> <p>12 A. I don't recall.</p> <p>13 Q. Can you tell me the year?</p> <p>14 A. I don't – I don't know the year.</p> <p>15 Q. Can you approximate the year in</p> <p>16 which you became the treasurer of HCMFA?</p> <p>17 A. I don't know.</p> <p>18 Q. Can you tell me if it was before or</p> <p>19 after 2016?</p> <p>20 A. I don't recall.</p> <p>21 Q. Are you still the – do you know if</p> <p>22 you're still the treasurer of HCMFA today?</p> <p>23 A. Today, I am the acting treasurer for</p> <p>24 HCMFA.</p> <p>25 Q. Is there a distinction between</p>
<p>Page 24</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 treasurer and acting treasurer?</p> <p>3 A. I said "acting treasurer" as I am an</p> <p>4 employee of Skyview, as you previously</p> <p>5 stated – or asked.</p> <p>6 Q. But you are the treasurer of HCMFA</p> <p>7 today; correct?</p> <p>8 A. I am – I am the acting treasurer</p> <p>9 for HCMFA.</p> <p>10 Q. How did you become the treasurer of</p> <p>11 HCMFA?</p> <p>12 A. Are you asking how I became the</p> <p>13 treasurer of HCMFA today?</p> <p>14 Q. How did you become appointed to</p> <p>15 serve as the treasurer of HCMFA?</p> <p>16 A. Well, in – in – in what time</p> <p>17 capacity?</p> <p>18 Q. The first time that you were</p> <p>19 appointed.</p> <p>20 A. First time. I believe I was asked</p> <p>21 to serve as treasurer for HCMFA the first time.</p> <p>22 Q. By who? Who asked you to do that?</p> <p>23 A. I don't recall.</p> <p>24 Q. Is there anything that would refresh</p> <p>25 your recollection as to who appointed you as</p>	<p>Page 25</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 the treasurer of CF- – HCMFA for the first</p> <p>3 time?</p> <p>4 A. I don't – I mean, there would be</p> <p>5 some documents, some legal documents. I don't</p> <p>6 know where those are.</p> <p>7 Q. How many times have you been</p> <p>8 appointed the treasurer of HCMFA?</p> <p>9 A. I don't know.</p> <p>10 Q. Was it more than once?</p> <p>11 A. I don't know.</p> <p>12 Q. Can you tell me any period of time</p> <p>13 since 2016 that you did not hold the title of</p> <p>14 treasurer of HCMFA?</p> <p>15 MS. DANDENEAU: Objection to form.</p> <p>16 A. I don't recall.</p> <p>17 Q. What are your duties and</p> <p>18 responsibilities as the treasurer of HCMFA?</p> <p>19 A. My duties are to do the best job</p> <p>20 that I can as the – as an accountant and</p> <p>21 finance guy.</p> <p>22 Q. What specific duties and</p> <p>23 responsibilities do you have as the treasurer</p> <p>24 of HCMFA?</p> <p>25 A. My duties are to do the best job</p>

<p>Page 26</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 that I can as the accounting and finance person</p> <p>3 for HCMFA.</p> <p>4 Q. As the accounting and finance person</p> <p>5 for HCMFA, do you have any particular areas of</p> <p>6 responsibility?</p> <p>7 A. Yeah, it is to manage the accounting</p> <p>8 and finance function for HCMFA.</p> <p>9 Q. Would that include – do you have</p> <p>10 responsibility for overseeing HCMFA's annual</p> <p>11 audit?</p> <p>12 A. Can I please elaborate on my prior</p> <p>13 question?</p> <p>14 Q. Of course. You – you are giving</p> <p>15 answers. I'm asking questions.</p> <p>16 A. Okay. Yes, so the – it – like I</p> <p>17 said, it is to manage the accounting finance</p> <p>18 aspect, but I am, as we discussed, the</p> <p>19 treasurer. That is – being treasurer is what</p> <p>20 gives me that – that management function.</p> <p>21 Q. Does anybody report to you in your</p> <p>22 capacity as treasurer of HCMFA?</p> <p>23 A. I don't believe so.</p> <p>24 Q. Does HCMFA have a chief financial</p> <p>25 officer?</p>	<p>Page 27</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I don't – I don't know.</p> <p>3 Q. You don't know?</p> <p>4 You're the treasurer of HCMFA but</p> <p>5 you don't know if HCMFA has a chief financial</p> <p>6 officer.</p> <p>7 Do I have that right?</p> <p>8 A. That's right.</p> <p>9 Q. Okay. Have you heard of a company</p> <p>10 called NexPoint Advisors?</p> <p>11 A. Yes.</p> <p>12 Q. We will refer to that as NexPoint.</p> <p>13 Okay?</p> <p>14 A. Okay.</p> <p>15 Q. Were you ever employed by NexPoint?</p> <p>16 A. I don't recall.</p> <p>17 Q. Did you ever hold any title with</p> <p>18 respect to the entity known as NexPoint?</p> <p>19 A. Yes.</p> <p>20 Q. What titles have you held in</p> <p>21 relation to NexPoint?</p> <p>22 A. Treasurer. I think it was only</p> <p>23 treasurer.</p> <p>24 Q. Can you tell me the approximate year</p> <p>25 you became the treasurer of NexPoint?</p>
<p>Page 28</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I don't know.</p> <p>3 Q. Are you still the treasurer of</p> <p>4 NexPoint today?</p> <p>5 A. I am the acting treasurer for</p> <p>6 NexPoint.</p> <p>7 Q. When did your title change from</p> <p>8 treasurer to acting treasurer?</p> <p>9 A. I don't know.</p> <p>10 Q. Did your duties and responsibilities</p> <p>11 change at all when your title was changed from</p> <p>12 treasurer to acting treasurer?</p> <p>13 A. I don't – I don't believe so.</p> <p>14 Q. Why did –</p> <p>15 A. I still manage the finance and</p> <p>16 accounting function for NexPoint.</p> <p>17 Q. Why did your title change from</p> <p>18 treasurer to acting treasurer?</p> <p>19 A. I don't – I'm using the term</p> <p>20 "acting treasurer" as I'm a Skyview employee.</p> <p>21 I don't – I don't know – again, I am a – as</p> <p>22 I am the Skyview employee.</p> <p>23 Q. Okay.</p> <p>24 A. And we – we provide officer</p> <p>25 services.</p>	<p>Page 29</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. And you serve as an officer of</p> <p>3 HCMFA; correct?</p> <p>4 A. I think we went over that with my</p> <p>5 testimony. Yes, I'm the acting treasurer for</p> <p>6 HCMFA.</p> <p>7 Q. And you are an officer of NexPoint;</p> <p>8 correct?</p> <p>9 A. I think – I am the acting treasurer</p> <p>10 for NexPoint Advisors.</p> <p>11 Q. And – and who appointed you acting</p> <p>12 treasurer of NexPoint Advisors?</p> <p>13 A. I don't recall specifically.</p> <p>14 Q. Do you have any recollection of who</p> <p>15 might have appointed you the treasurer of</p> <p>16 NexPoint?</p> <p>17 A. I mean, it – it – I don't recall</p> <p>18 exactly who it was.</p> <p>19 Q. Who were the possibilities?</p> <p>20 MS. DEITSCH-PEREZ: Object to the</p> <p>21 form.</p> <p>22 Q. You can answer.</p> <p>23 A. Someone in the legal group for</p> <p>24 NexPoint. The other officers as well.</p> <p>25 Q. Have you heard of a company called</p>

<p>Page 30</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Highland Capital Management Services, Inc.?</p> <p>3 A. Yes.</p> <p>4 Q. We will refer to that as HCMS.</p> <p>5 Okay?</p> <p>6 A. HCMS. Okay.</p> <p>7 Q. Were you ever employed by HCMS?</p> <p>8 A. No.</p> <p>9 Q. Have you ever held any titles in</p> <p>10 relation to HCMF – I apologize – HCMS?</p> <p>11 A. Yes.</p> <p>12 Q. What titles have you held in</p> <p>13 relation to HCMS?</p> <p>14 A. Treasurer and acting treasurer.</p> <p>15 Q. When did you first become treasurer</p> <p>16 or acting treasurer of HCMS?</p> <p>17 A. I don't recall the exact dates.</p> <p>18 Q. Can you recall – can you</p> <p>19 approximate the year that you became the</p> <p>20 treasurer of HCMS?</p> <p>21 A. I don't – I don't know.</p> <p>22 Q. Are you still the treasurer of HCMS</p> <p>23 today?</p> <p>24 A. I am the acting treasurer for HCMS.</p> <p>25 Q. And are your duties and</p>	<p>Page 31</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 responsibilities as the acting treasurer for</p> <p>3 HCMS and the acting treasurer for NexPoint the</p> <p>4 same as your duties and responsibilities in</p> <p>5 your role as the acting treasurer of HCMFA?</p> <p>6 A. More or less.</p> <p>7 Q. Have you ever heard of a company</p> <p>8 called HCRE Partners, LLC?</p> <p>9 A. Yes.</p> <p>10 Q. And do you understand that that</p> <p>11 entity is now known today as NexPoint Real</p> <p>12 Estate Partners?</p> <p>13 A. I did not know that.</p> <p>14 Q. All right. Can we refer to HCRE</p> <p>15 Partners as HCRE?</p> <p>16 MS. DANDENEAU: Objection to form.</p> <p>17 Did you mean NexPoint Real Estate</p> <p>18 Partners, Mr. Morris?</p> <p>19 MR. MORRIS: No.</p> <p>20 MS. DANDENEAU: Oh.</p> <p>21 MR. MORRIS: He said he wasn't</p> <p>22 familiar that it was succeeded by that</p> <p>23 entity. So –</p> <p>24 MS. DANDENEAU: Okay.</p> <p>25 MR. MORRIS: – let's go with what</p>
<p>Page 32</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 the witness knows.</p> <p>3 Q. You're familiar with an entity</p> <p>4 called HCRE Partners, LLC; correct?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. So that is the entity that we</p> <p>7 will refer to as HCRE. If you're aware of any</p> <p>8 successor, that is great. If not, let's just</p> <p>9 define it as such.</p> <p>10 Have you ever been employed by HCRE</p> <p>11 or any entity that you know to have succeeded</p> <p>12 HCRE?</p> <p>13 A. No.</p> <p>14 Q. Did you ever serve as an officer or</p> <p>15 director of HCRE or any successor?</p> <p>16 A. Not that I recall.</p> <p>17 Q. Okay. Can we refer to NexPoint and</p> <p>18 HCMFA as the advisors?</p> <p>19 A. Yes.</p> <p>20 Q. In general, the advisors provided</p> <p>21 investment advisory services to certain retail</p> <p>22 funds; correct?</p> <p>23 A. Yes.</p> <p>24 Q. And we will refer to the retail</p> <p>25 funds that are served by the advisors</p>	<p>Page 33</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 collectively as the retail funds; is that okay?</p> <p>3 A. Okay.</p> <p>4 Q. Each of the retail funds is governed</p> <p>5 by a board; correct?</p> <p>6 A. Yes.</p> <p>7 Q. And do you know the people who serve</p> <p>8 on the boards of the retail funds?</p> <p>9 MS. DANDENEAU: Objection to form.</p> <p>10 A. I don't know all of them.</p> <p>11 Q. Do you know whether the same people</p> <p>12 serve on the board of each of the retail funds</p> <p>13 as we've defined that term?</p> <p>14 A. Which – so when you say "retail</p> <p>15 funds" – again, I want to be – what retail</p> <p>16 funds are you referring to, because there are</p> <p>17 – there are several distinctions?</p> <p>18 What retail funds are you using when</p> <p>19 you refer to them?</p> <p>20 Q. That is why – that is why I tried</p> <p>21 to define the terms. So let me do it again.</p> <p>22 Retail funds for the purposes of</p> <p>23 this deposition means any retail fund to which</p> <p>24 either of the advisors provides advisory</p> <p>25 services. Okay?</p>

<p>Page 34</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Okay.</p> <p>3 Q. Okay. So do you know whether the</p> <p>4 same people serve on the board of each of the</p> <p>5 retail funds?</p> <p>6 A. I don't know.</p> <p>7 Q. Were you ever employed by any of the</p> <p>8 retail funds?</p> <p>9 A. No.</p> <p>10 Q. No?</p> <p>11 A. No.</p> <p>12 Q. Okay. Do you have any title with</p> <p>13 respect to any of the retail funds?</p> <p>14 A. Yes.</p> <p>15 Q. What titles do you hold –</p> <p>16 withdrawn.</p> <p>17 Do you have the same titles with</p> <p>18 respect to all of the retail funds or do</p> <p>19 they – or just something else?</p> <p>20 MS. DANDENEAU: Objection to form.</p> <p>21 Q. Withdrawn.</p> <p>22 Do you have the same title with</p> <p>23 respect to each of the retail funds?</p> <p>24 A. No.</p> <p>25 Q. Tell me which title you have with</p>	<p>Page 35</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 respect to each retail fund.</p> <p>3 Actually, let's do it a different</p> <p>4 way. I withdraw the question.</p> <p>5 Can you give me one title you have</p> <p>6 in relation to any retail fund?</p> <p>7 A. Yes.</p> <p>8 Q. What title – what title can you</p> <p>9 give me?</p> <p>10 A. Principal executive officer.</p> <p>11 Q. Do you serve as principal executive</p> <p>12 officer for each of the retail funds?</p> <p>13 A. No.</p> <p>14 Q. Can you identify for me the retail</p> <p>15 funds in which you serve as the principal</p> <p>16 executive officer?</p> <p>17 A. Yes. Highland Funds 1, Highland</p> <p>18 Funds 2, Highland Income Fund, Highland Global</p> <p>19 Allocation Fund.</p> <p>20 Q. I'm sorry, you said "Global</p> <p>21 Allocation Fund"?</p> <p>22 A. Yes.</p> <p>23 VIDEOGRAPHER: Excuse me,</p> <p>24 Mr. Morris. This is the videographer. I'm</p> <p>25 concerned about the lighting in the</p>
<p>Page 36</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 witness' camera.</p> <p>3 Do you want to go off the record and</p> <p>4 make some adjustments?</p> <p>5 MR. MORRIS: Sure, but just for this</p> <p>6 purpose. I don't want to take a break. We</p> <p>7 just started.</p> <p>8 MS. DANDENEAU: Yeah, that is fine.</p> <p>9 That is fine. We're going to put you on</p> <p>10 mute.</p> <p>11 MR. MORRIS: All right.</p> <p>12 MS. DANDENEAU: I'm going to try to</p> <p>13 open up some of the shades.</p> <p>14 VIDEOGRAPHER: We're going off the</p> <p>15 record at 10:08 a.m.</p> <p>16 (Recess taken 10:08 a.m. to 10:11 a.m.)</p> <p>17 VIDEOGRAPHER: We are back on the</p> <p>18 record at 10:11 a.m.</p> <p>19 Q. Mr. Waterhouse, when did you become</p> <p>20 the principal executive officer of the four</p> <p>21 retail funds that you just identified?</p> <p>22 A. I don't recall.</p> <p>23 Q. Do you recall the approximate year</p> <p>24 that you became the principal executive officer</p> <p>25 of the four funds?</p>	<p>Page 37</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. 2021.</p> <p>3 Q. Did you ever hold any title with</p> <p>4 respect to any of the four funds you have just</p> <p>5 identified other than principal executive</p> <p>6 officer?</p> <p>7 A. I don't recall.</p> <p>8 Q. Is it possible that you held a</p> <p>9 position or a title with the four funds you</p> <p>10 just identified prior to 2021?</p> <p>11 A. Yes.</p> <p>12 Q. But you don't recall if you did or</p> <p>13 not; do I have that right?</p> <p>14 A. No. You – I thought you asked, did</p> <p>15 I hold other titles.</p> <p>16 Q. Did you hold any title at the four</p> <p>17 retail funds for which you now serve as</p> <p>18 principal executive officer at any time prior</p> <p>19 to 2021?</p> <p>20 A. Yes.</p> <p>21 Q. What titles did you hold?</p> <p>22 A. I don't recall all the titles.</p> <p>23 Q. Do you recall any of the titles?</p> <p>24 A. Yes.</p> <p>25 Q. What titles do you recall holding at</p>

<p>Page 38</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 those four retail funds before 2021?</p> <p>3 A. Principal executive officer.</p> <p>4 Q. Were you the principal executive</p> <p>5 officer of the four retail funds that you have</p> <p>6 identified?</p> <p>7 A. Sorry, could you repeat the</p> <p>8 question?</p> <p>9 Q. Were you the principal executive</p> <p>10 officer for each of the four retail funds that</p> <p>11 you have identified?</p> <p>12 A. Yes.</p> <p>13 Q. When did you become the principal</p> <p>14 executive – withdrawn.</p> <p>15 Can you give me the approximate year</p> <p>16 that you became the principal executive officer</p> <p>17 for each of the four retail funds you've</p> <p>18 identified?</p> <p>19 A. I don't recall.</p> <p>20 Q. What are your duties and</p> <p>21 responsibilities as the principal executive</p> <p>22 officer of these four retail funds?</p> <p>23 A. It is to manage the finance and</p> <p>24 accounting positions.</p> <p>25 Q. So at the same time you serve as the</p>	<p>Page 39</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 treasurer of the advisors, you also serve as</p> <p>3 the principal executive officer of these four</p> <p>4 retail funds; correct?</p> <p>5 A. Yes.</p> <p>6 Q. Did you ever hold any title with</p> <p>7 respect to any other retail fund?</p> <p>8 A. Not that I recall.</p> <p>9 Q. During the period that you served as</p> <p>10 Highland's CFO, from time to time Highland</p> <p>11 loaned money to certain of its officers and</p> <p>12 employees; correct?</p> <p>13 A. Yes.</p> <p>14 Q. During the period that you served as</p> <p>15 Highland's CFO, from time to time Highland</p> <p>16 loaned money to certain –</p> <p>17 A. Let me – let me retract that,</p> <p>18 sorry, that – you asked during the time I was</p> <p>19 CFO, Highland loaned moneys to employees. I</p> <p>20 don't – I don't recall that during my tenure</p> <p>21 of CFO.</p> <p>22 Q. You have no recollection during the</p> <p>23 time that you were the CFO of Highland of</p> <p>24 Highland ever loaning any money to any officer</p> <p>25 or director of Highland?</p>
<p>Page 40</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I don't recall during my tenure of</p> <p>3 Highland or my – as CFO of Highland – yeah,</p> <p>4 if there are any loans as CFO of Highland.</p> <p>5 Q. I'm just talking about officers and</p> <p>6 employees right now. You have no recollection</p> <p>7 of Highland ever making a loan to any of its</p> <p>8 officers or employees during the time that you</p> <p>9 served as CFO. Do I have that right?</p> <p>10 MS. DANDENEAU: Objection to form.</p> <p>11 A. So I thought you were saying</p> <p>12 officers and employees as CFO, right, so there</p> <p>13 were – I mean, okay, yes.</p> <p>14 Q. I would ask you to listen carefully</p> <p>15 to my question. If I – if I'm not clear, let</p> <p>16 me know, but I'm really trying to be as clear</p> <p>17 as I can.</p> <p>18 A. I'm listening as carefully as I can,</p> <p>19 and you are asking very specific questions in a</p> <p>20 timeline. And I'm trying to answer your</p> <p>21 questions as specifically as I can, and I</p> <p>22 apologize if – if I'm going back. I am – you</p> <p>23 are asking very specific questions. Thank you.</p> <p>24 Q. During the period that you served as</p> <p>25 Highland's CFO, from time to time Highland</p>	<p>Page 41</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 loaned money to certain corporate affiliates;</p> <p>3 correct?</p> <p>4 MS. DANDENEAU: Objection to form.</p> <p>5 A. What are corporate affiliates?</p> <p>6 Q. How about the ones that are in</p> <p>7 Highland's audited financial statements under</p> <p>8 the section entitled Loans to Affiliates. Why</p> <p>9 don't we start with those. Do you have any</p> <p>10 understanding of what the phrase "affiliates"</p> <p>11 means?</p> <p>12 MS. DANDENEAU: Objection to form.</p> <p>13 A. I understand what affiliates are,</p> <p>14 yet affiliates can have different meanings in</p> <p>15 different contexts, so...</p> <p>16 Q. Why don't you – why don't you tell</p> <p>17 me what your understanding of the term</p> <p>18 "affiliate" is in relation to Highland Capital</p> <p>19 Management, L.P.</p> <p>20 A. Is that a – it depends on the</p> <p>21 context.</p> <p>22 Q. How about the context of making</p> <p>23 loans?</p> <p>24 MS. DANDENEAU: Objection to form.</p> <p>25 A. I didn't make the determination of</p>

<p>Page 42</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 who an affiliate was or is at the time those –</p> <p>3 I didn't – that wasn't my job to make a</p> <p>4 determination of who an affiliate is.</p> <p>5 Q. All right. So as the CFO of</p> <p>6 Highland, do you have any ability right now to</p> <p>7 tell me which companies that were directly or</p> <p>8 indirectly owned and/or controlled by</p> <p>9 Mr. Dondero in whole or in part received loans</p> <p>10 from Highland Capital Management, L.P.?</p> <p>11 MS. DANDENEAU: Objection to form.</p> <p>12 MS. DEITSCH-PEREZ: Objection, form.</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Identify every entity that</p> <p>15 you can think of that was directly or</p> <p>16 indirectly owned and/or controlled by</p> <p>17 Mr. Dondero in whole or in part that received a</p> <p>18 loan from Highland Capital Management, L.P.</p> <p>19 MR. RUKAVINA: Objection, legal</p> <p>20 conclusion.</p> <p>21 A. NexPoint Advisors, Highland Capital</p> <p>22 Management Fund Advisors, HCM Services,</p> <p>23 Dugaboy. Sorry, I don't think – Dugaboy</p> <p>24 doesn't fit that definition. You said owned</p> <p>25 and controlled. I don't think that that</p>	<p>Page 43</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 definition –</p> <p>3 Q. I said owned and/or controlled.</p> <p>4 A. I don't – again, I'm not – I'm not</p> <p>5 the legal expert. I don't think it controls –</p> <p>6 he controls Dugaboy, so again, I'm not the</p> <p>7 legal person.</p> <p>8 Q. I'm not asking you for a legal</p> <p>9 conclusion, sir. I'm asking you for your</p> <p>10 knowledge, okay, as the CFO – the former CFO</p> <p>11 of Highland Capital Management, other than</p> <p>12 NexPoint, HCMFA, and HCMF – HCMS, can you</p> <p>13 think of any other entities that were owned</p> <p>14 and/or controlled directly or indirectly in</p> <p>15 whole or in part by Jim Dondero who received a</p> <p>16 loan from Highland Capital Management, L.P.?</p> <p>17 MS. DANDENEAU: Objection to form.</p> <p>18 A. HCRE.</p> <p>19 Q. Any others?</p> <p>20 A. That is – that is all I can think</p> <p>21 of.</p> <p>22 Q. And you're aware that from time to</p> <p>23 time while you were the CFO, Highland loaned</p> <p>24 money to Jim Dondero; correct?</p> <p>25 A. Yes.</p>
<p>Page 44</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. Can we refer to the four</p> <p>3 entities that you just named and Mr. Dondero as</p> <p>4 the affiliates?</p> <p>5 A. So that would be Jim Dondero,</p> <p>6 NexPoint Advisors, Highland Capital Management</p> <p>7 Fund Advisors, and HCRE.</p> <p>8 Q. And HCMS?</p> <p>9 A. And HCMS, okay.</p> <p>10 Q. And can we refer to the loans that</p> <p>11 were given to each of those affiliates as the</p> <p>12 affiliate loans?</p> <p>13 A. Yes.</p> <p>14 Q. And is it fair to say that each of</p> <p>15 the affiliates were the borrowers under the</p> <p>16 affiliate loans as we're defining the term?</p> <p>17 MR. RUKAVINA: Objection, legal</p> <p>18 conclusion.</p> <p>19 A. The borrowers are whoever were on</p> <p>20 the notes. I don't – I don't know. I'm not</p> <p>21 the legal person.</p> <p>22 Q. But you –</p> <p>23 A. I don't know.</p> <p>24 Q. You do know, as Highland's former</p> <p>25 CFO, that each of the affiliates that you have</p>	<p>Page 45</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 identified tendered notes to Highland; correct?</p> <p>3 MR. RUKAVINA: Hey, John, will you</p> <p>4 just give me a running objection to legal</p> <p>5 conclusion to HCM –</p> <p>6 MR. MORRIS: No. No, if you want to</p> <p>7 object –</p> <p>8 MR. RUKAVINA: I will object every</p> <p>9 time. Object to legal conclusion.</p> <p>10 MR. MORRIS: That is fine.</p> <p>11 A. Sorry, can you repeat the question?</p> <p>12 Q. Are you aware that each of the –</p> <p>13 that each of the affiliates, as we have defined</p> <p>14 the term, gave to Highland a promissory note in</p> <p>15 exchange for the loans?</p> <p>16 MR. RUKAVINA: Objection to the</p> <p>17 extent that calls for a legal conclusion.</p> <p>18 A. I don't.</p> <p>19 Q. No, you don't know that?</p> <p>20 A. No, they didn't – you said they</p> <p>21 exchanged a promissory note for a loan. I</p> <p>22 don't – I don't understand that question, so I</p> <p>23 said no.</p> <p>24 Q. At the time of the bankruptcy</p> <p>25 filing, did Highland have in its possession</p>

<p>Page 46</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 promissory notes that were signed by each of</p> <p>3 the affiliates?</p> <p>4 A. Yes.</p> <p>5 Q. To the best of your knowledge,</p> <p>6 during the time that you served as Highland's</p> <p>7 CFO, did Highland disclose to its outside</p> <p>8 auditors all of the loans that were made to</p> <p>9 affiliates?</p> <p>10 MR. RUKAVINA: Objection, that calls</p> <p>11 for a legal conclusion.</p> <p>12 MS. DEITSCH-PEREZ: I also couldn't</p> <p>13 hear you, John, because there was some</p> <p>14 garbling on – on the – on the call.</p> <p>15 MR. MORRIS: Folks, I've got to tell</p> <p>16 you this is not going well, and I'm</p> <p>17 reserving my right –</p> <p>18 MS. DANDENEAU: John, it was just</p> <p>19 the end of that question. It was just the</p> <p>20 end of that question. I couldn't hear it</p> <p>21 either. Sorry, if you could repeat it,</p> <p>22 please.</p> <p>23 MR. MORRIS: That is less than an</p> <p>24 hour into this, but folks are trying to run</p> <p>25 out the clock, and so I'm just going to</p>	<p>Page 47</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 state that now.</p> <p>3 MS. DANDENEAU: You know, and,</p> <p>4 Mr. Morris, I really object to that. I</p> <p>5 mean –</p> <p>6 MR. MORRIS: Okay.</p> <p>7 MS. DANDENEAU: – Mr. Waterhouse</p> <p>8 just told you he's trying to listen to your</p> <p>9 questions and answer them carefully, and</p> <p>10 you have no basis for saying that.</p> <p>11 MR. MORRIS: Okay.</p> <p>12 MS. DANDENEAU: This does not –</p> <p>13 this is not an experienced witness, so he's</p> <p>14 trying to do the best he can.</p> <p>15 Q. Mr. Waterhouse, during the time that</p> <p>16 you served as Highland's CFO, did Highland</p> <p>17 disclose to its outside auditors all of the</p> <p>18 loans that it made to each of the affiliates</p> <p>19 that you have identified?</p> <p>20 MR. RUKAVINA: Objection, legal</p> <p>21 conclusion.</p> <p>22 A. Yes.</p> <p>23 Q. To the best of your knowledge, while</p> <p>24 you were Highland's CFO, were all of the</p> <p>25 affiliate loans described in Highland's audited</p>
<p>Page 48</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 financial statements?</p> <p>3 MR. RUKAVINA: Objection, legal</p> <p>4 conclusion.</p> <p>5 A. When an audit was performed, any</p> <p>6 loans that were made by Highland to the</p> <p>7 affiliates were disclosed to auditors.</p> <p>8 Q. Are you aware of any loan that was</p> <p>9 made to any affiliate that was not disclosed to</p> <p>10 the auditors?</p> <p>11 A. I'm not aware.</p> <p>12 Q. To the best of your knowledge, did</p> <p>13 each of the affiliates who were –</p> <p>14 (inaudible) – loaned from Highland execute a</p> <p>15 promissory note in connection with that loan?</p> <p>16 MR. RUKAVINA: Objection, legal</p> <p>17 conclusion.</p> <p>18 A. Sorry, you – halfway through the</p> <p>19 question it got muffled.</p> <p>20 Can you repeat that again?</p> <p>21 Q. To the best of your knowledge, did</p> <p>22 every affiliate execute a promissory note in</p> <p>23 connection with each loan that it obtained from</p> <p>24 Highland?</p> <p>25 MR. RUKAVINA: Objection, legal</p>	<p>Page 49</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 conclusion.</p> <p>3 A. Yes.</p> <p>4 Q. You are not aware of any loan that</p> <p>5 any affiliate ever obtained from Highland where</p> <p>6 the affiliate did not give a promissory note in</p> <p>7 return; is that fair?</p> <p>8 A. Yes, I'm not aware.</p> <p>9 Q. And to the best of your knowledge,</p> <p>10 did Highland loan to each affiliate an amount</p> <p>11 of money equal to the principal amount of each</p> <p>12 promissory note?</p> <p>13 MR. RUKAVINA: Objection, legal</p> <p>14 conclusion.</p> <p>15 A. Yes.</p> <p>16 Q. During the time that you served as</p> <p>17 CFO, did Highland ever loan money to</p> <p>18 Mark Okada?</p> <p>19 A. I – I don't recall.</p> <p>20 Q. Did you ever see any promissory</p> <p>21 notes executed by Mark Okada?</p> <p>22 A. I don't recall.</p> <p>23 Q. Do you know if Highland ever forgave</p> <p>24 any loan that it ever made to Mr. Okada?</p> <p>25 A. I don't recall.</p>

<p>Page 50</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Do you recall if Mr. Okada paid back</p> <p>3 all principal and interest due and owing under</p> <p>4 any loan he obtained from Highland?</p> <p>5 MS. DEITSCH-PEREZ: Objection to</p> <p>6 form.</p> <p>7 MS. DANDENEAU: Objection to form.</p> <p>8 A. I don't recall.</p> <p>9 Q. Do you recall whether – during your</p> <p>10 time as CFO, whether Highland ever loaned money</p> <p>11 to Jim Dondero?</p> <p>12 A. Yes.</p> <p>13 Q. To the best of your knowledge, did</p> <p>14 Mr. Dondero sign and deliver to Highland a</p> <p>15 promissory note in connection with each loan</p> <p>16 that he obtained from Highland?</p> <p>17 A. If you are referring to the</p> <p>18 promissory notes that, you know, part of</p> <p>19 Highland's records, yes.</p> <p>20 Q. Okay. You're not aware of any loan</p> <p>21 that Mr. Dondero took from Highland that wasn't</p> <p>22 backed up by – by a promissory note with a</p> <p>23 face – with a principal amount equal to the</p> <p>24 amount of the loan; correct?</p> <p>25 A. Am I aware that Jim Dondero took a</p>	<p>Page 51</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 loan?</p> <p>3 Q. Without giving a – let me ask a</p> <p>4 better question. I'm sorry, Mr. Waterhouse.</p> <p>5 Are you aware of any loan that</p> <p>6 Mr. Dondero obtained from Highland where he</p> <p>7 didn't give a promissory note in return?</p> <p>8 A. I'm not aware.</p> <p>9 Q. During the time that you served as</p> <p>10 Highland's CFO, did Highland ever forgive any</p> <p>11 loans, in whole or in part, that it made to</p> <p>12 Mr. Dondero?</p> <p>13 A. Not that I'm aware.</p> <p>14 Q. At the time that you served as</p> <p>15 Highland's CFO, did Highland ever forgive any</p> <p>16 loan, in whole or in part, that it made to any</p> <p>17 affiliate as we've defined the term today?</p> <p>18 A. Not that I'm aware.</p> <p>19 Q. During the time that you served as</p> <p>20 Highland's CFO, did Highland ever forgive, in</p> <p>21 whole or in part, any loan that it ever made to</p> <p>22 any officer or employee?</p> <p>23 A. Highland forgave loans to officers</p> <p>24 and employees. It may not have been at the</p> <p>25 time when my title was CFO.</p>
<p>Page 52</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. And so I appreciate the</p> <p>3 distinction.</p> <p>4 Is it fair to say that, to the best</p> <p>5 of your knowledge, Highland did not forgive a</p> <p>6 loan that it made to an officer or employee</p> <p>7 after 2013?</p> <p>8 MS. DANDENEAU: Objection to form.</p> <p>9 A. I don't recall.</p> <p>10 Q. To the best of your knowledge, did</p> <p>11 Highland disclose to its auditors every</p> <p>12 instance where it forgave, in whole or in part,</p> <p>13 a loan that it had made to one of its officers</p> <p>14 or employees?</p> <p>15 A. No.</p> <p>16 Q. Can you think of – can you – can</p> <p>17 you identify any loan to an officer or employee</p> <p>18 that was forgiven by Highland, in whole or in</p> <p>19 part, that was not disclosed to Highland's</p> <p>20 outside auditors?</p> <p>21 A. Look, I don't recall all of the</p> <p>22 loans and the loan forgiveness. I just know as</p> <p>23 part of the audit process there is a</p> <p>24 materiality concept.</p> <p>25 So if there were loans to employees</p>	<p>Page 53</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 that were of – you know, that were deemed</p> <p>3 immaterial, those items may not have been</p> <p>4 disclosed by the team to the auditors.</p> <p>5 Q. I appreciate that.</p> <p>6 Do you have an understanding as to</p> <p>7 what the level of materiality was?</p> <p>8 A. I don't recall.</p> <p>9 Q. As the CFO of Highland, to the best</p> <p>10 of your knowledge, did Highland disclose to its</p> <p>11 outside auditors every loan that was forgiven,</p> <p>12 in whole or in part, that was material as that</p> <p>13 term was defined by the outside auditors?</p> <p>14 A. Yes.</p> <p>15 Q. And do you recall where – do you</p> <p>16 recall where the definition of materiality can</p> <p>17 be found for – for this particular purpose?</p> <p>18 MS. DANDENEAU: Objection to form.</p> <p>19 A. No. You – I don't determine</p> <p>20 materiality.</p> <p>21 Q. Okay. I'm just asking you if you</p> <p>22 can help me understand where it is, but I think</p> <p>23 we will find it in a few minutes.</p> <p>24 You are aware that Highland has</p> <p>25 commenced lawsuits against each of the</p>

<p>Page 54</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 affiliates, as we've defined the term, to</p> <p>3 collect under certain promissory notes; is that</p> <p>4 right?</p> <p>5 A. Yes.</p> <p>6 Q. And are you familiar with the notes</p> <p>7 that are issue – at issue in the lawsuits?</p> <p>8 MS. DANDENEAU: Objection to form.</p> <p>9 A. Generally familiar.</p> <p>10 Q. Can we refer to the lawsuits that</p> <p>11 Highland has commenced against the affiliates</p> <p>12 collectively as the lawsuits?</p> <p>13 A. Yes. And, again, the affiliates are</p> <p>14 NexPoint, HCMFA, HCMS, and HCRE.</p> <p>15 Q. And Mr. Dondero?</p> <p>16 A. Okay. See, that is a new – and now</p> <p>17 Mr. Dondero is included in your affiliate</p> <p>18 definition.</p> <p>19 Q. I just –</p> <p>20 A. I thought affiliates – I thought</p> <p>21 affiliates were just the four prior entities,</p> <p>22 so I just want to be clear.</p> <p>23 Q. I appreciate that. So let's –</p> <p>24 let's keep them separate and let's refer to the</p> <p>25 four corporate entities as the affiliates, and</p>	<p>Page 55</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Mr. Dondero we will call Mr. Dondero. Okay?</p> <p>3 A. Okay. Thank you. As you can see,</p> <p>4 Mr. Morris, there is a lot of entities – a lot</p> <p>5 here. I just want to be clear.</p> <p>6 Q. Okay. Now, the affiliates of</p> <p>7 Mr. Dondero signed promissory notes that are</p> <p>8 not subject to the lawsuit.</p> <p>9 Do you understand that?</p> <p>10 MS. DANDENEAU: Objection to form.</p> <p>11 A. The affiliates and Mr. Dondero</p> <p>12 signed –</p> <p>13 Q. You know what? I will skip it.</p> <p>14 That is okay. Okay.</p> <p>15 From time to time while you were</p> <p>16 Highland's CFO, payments were applied against</p> <p>17 principal and interests that were due under the</p> <p>18 notes that were tendered by the affiliates and</p> <p>19 Mr. Dondero; correct?</p> <p>20 MR. RUKAVINA: Objection to the</p> <p>21 extent that calls for a legal conclusion.</p> <p>22 A. Yes.</p> <p>23 Q. Did Highland have a process where –</p> <p>24 whereby payments would be applied against</p> <p>25 principal and interest against the notes that</p>
<p>Page 56</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 were given by the affiliates and Mr. Dondero?</p> <p>3 A. Yes.</p> <p>4 Q. Can you describe the process for me?</p> <p>5 A. The process, payment should be</p> <p>6 applied as laid out in the – in the promissory</p> <p>7 note.</p> <p>8 Q. From time to time were payments made</p> <p>9 that were not required under the promissory</p> <p>10 notes?</p> <p>11 MS. DANDENEAU: Objection to form.</p> <p>12 A. Yes.</p> <p>13 Q. Who was responsible for deciding</p> <p>14 when and how much the payments would be made</p> <p>15 with respect to each of the notes that were</p> <p>16 issued by the affiliates and Mr. Dondero?</p> <p>17 A. Who was responsible for deciding how</p> <p>18 much was paid prior to the due date?</p> <p>19 Q. Yes.</p> <p>20 A. I don't know.</p> <p>21 Q. Did you approve of each payment that</p> <p>22 was made against principal and interest on the</p> <p>23 notes that were given by the affiliates and</p> <p>24 Mr. Dondero?</p> <p>25 MS. DANDENEAU: Objection to form.</p>	<p>Page 57</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Did I approve the payments? I</p> <p>3 approve – I approve – if there was cash – if</p> <p>4 there was cash being repaid on a note payment,</p> <p>5 yes, I approved in the general sense of being</p> <p>6 made aware of the payment and the amount.</p> <p>7 Q. And are you the person who</p> <p>8 authorized Highland's employees to effectuate</p> <p>9 those payments?</p> <p>10 A. Yes.</p> <p>11 Q. When you gave the instruction to</p> <p>12 effectuate the payment, did you obtain</p> <p>13 Mr. Dondero's prior approval?</p> <p>14 A. I mean, it – I mean, it – it</p> <p>15 depends.</p> <p>16 Q. Can you think of any instance where</p> <p>17 you directed Highland's employees to make a</p> <p>18 payment of principal or interest against any</p> <p>19 note that was tendered by an affiliate or</p> <p>20 Mr. Dondero that Mr. Dondero did not approve of</p> <p>21 in advance?</p> <p>22 A. I can't recall specifically.</p> <p>23 Q. Can you identify – withdrawn.</p> <p>24 Did Mr. Dondero ever tell you that a</p> <p>25 payment that was made against principal and</p>

<p>Page 58</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 interest due under one of the notes that was</p> <p>3 tendered by an affiliate or himself should not</p> <p>4 have been made?</p> <p>5 A. Yes.</p> <p>6 Q. Can you identify the payment for me?</p> <p>7 A. It would be for -- for NexPoint</p> <p>8 Advisors.</p> <p>9 Q. Okay. And when did Mr. Dondero tell</p> <p>10 you that a payment that you had initiated on</p> <p>11 behalf of NexPoint should not have been made?</p> <p>12 A. I wasn't initiating payment. It was</p> <p>13 in the context of the -- I think you used this</p> <p>14 term, "the advisors," so NexPoint Advisors and</p> <p>15 Highland Capital Management Fund Advisors had</p> <p>16 overpaid on certain agreements with Highland</p> <p>17 Capital Management, L.P. And as a part of that</p> <p>18 process, the advisors -- what I was told at the</p> <p>19 time were in talks and negotiations and</p> <p>20 discussions with Highland Capital Management,</p> <p>21 L.P., on offsets in relation to those</p> <p>22 overpayments.</p> <p>23 Q. When did this conversation take</p> <p>24 place?</p> <p>25 MS. DANDENEAU: Objection to form.</p>	<p>Page 59</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I don't recall specifically.</p> <p>3 Q. Do you recall what year it was?</p> <p>4 A. Yes.</p> <p>5 Q. What year did the conversation with</p> <p>6 Mr. Dondero take place that you just described?</p> <p>7 A. 2020.</p> <p>8 Q. Okay. Do you remember if it was</p> <p>9 December 2020?</p> <p>10 A. It -- it -- I don't -- I don't</p> <p>11 recall what month specifically, but it would</p> <p>12 have been November or December.</p> <p>13 Q. And we're talking here about a</p> <p>14 payment of principal and/or interest that was</p> <p>15 due -- withdrawn.</p> <p>16 We're talking here about a payment</p> <p>17 of principal and interest that was applied</p> <p>18 against NexPoint's note; correct?</p> <p>19 MS. DANDENEAU: Objection to form.</p> <p>20 A. I don't recall what that payment</p> <p>21 consisted of.</p> <p>22 Q. Is it possible that the payment you</p> <p>23 have in mind related to the shared services</p> <p>24 agreement?</p> <p>25 MS. DANDENEAU: Objection to form.</p>
<p>Page 60</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. No.</p> <p>3 Q. Are you certain that the payment --</p> <p>4 that the payment that you have in mind related</p> <p>5 to the promissory note that NexPoint issued in</p> <p>6 favor of Highland?</p> <p>7 MS. DANDENEAU: Objection to form.</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Other than that one payment,</p> <p>10 can you identify any other instance where</p> <p>11 Mr. Dondero told you that a payment should not</p> <p>12 have been applied against principal and</p> <p>13 interest under any promissory note tendered by</p> <p>14 any affiliate or Mr. Dondero?</p> <p>15 MS. DANDENEAU: Objection to form.</p> <p>16 MS. DEITSCH-PEREZ: Objection to</p> <p>17 form.</p> <p>18 A. Not that I recall.</p> <p>19 Q. Thank you very much.</p> <p>20 Do you know if Mr. Dondero approved</p> <p>21 in advance of each loan made to each affiliate</p> <p>22 and himself during the time that you were the</p> <p>23 CFO?</p> <p>24 MS. DEITSCH-PEREZ: Object to the</p> <p>25 form.</p>	<p>Page 61</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes, generally.</p> <p>3 Q. Can you identify any loan that was</p> <p>4 ever made to an affiliate or to Mr. Dondero</p> <p>5 that Mr. Dondero did not approve of in advance?</p> <p>6 A. Other than the ones that are in</p> <p>7 dispute, I'm not aware.</p> <p>8 Q. Do you believe that Mr. Dondero did</p> <p>9 not approve of each of the loans that are in</p> <p>10 dispute in advance of the time that the loan</p> <p>11 was made?</p> <p>12 MS. DANDENEAU: Objection to form.</p> <p>13 A. Given what is in the dispute, you</p> <p>14 know, and -- and -- and the way things might --</p> <p>15 yeah, I mean...</p> <p>16 Q. I am not asking about the dispute,</p> <p>17 and it was probably my mistake to follow you</p> <p>18 there.</p> <p>19 Were you aware of every loan made by</p> <p>20 Highland to each of its affiliates and</p> <p>21 Mr. Dondero while you were the CFO at the time</p> <p>22 each loan was made?</p> <p>23 A. Was I aware of every loan, yes.</p> <p>24 Q. Okay. And if you put yourself back</p> <p>25 in time, do you recall that any of the loans</p>

<p>Page 62</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 that were made to one of the affiliates or</p> <p>3 Mr. Dondero during the time that you were the</p> <p>4 CFO was made without Mr. Dondero's prior</p> <p>5 knowledge and approval?</p> <p>6 A. Not that I recall.</p> <p>7 Q. Thank you. In fact, do you – as</p> <p>8 the CFO, would you have allowed Highland to</p> <p>9 loan money to an affiliate or to Mr. Dondero</p> <p>10 without obtaining Mr. Dondero's prior approval?</p> <p>11 MS. DANDENEAU: Objection to form.</p> <p>12 A. I can't – there was so many times</p> <p>13 over the years, I can't speak for every single</p> <p>14 one, but generally, yes, I – I spoke to him.</p> <p>15 Q. You – you never – you never –</p> <p>16 withdrawn. I will just take that.</p> <p>17 Can you recall any payment that was</p> <p>18 ever made against principal and interest on a</p> <p>19 note that was issued in favor of Highland by an</p> <p>20 affiliate or Mr. Dondero that you personally</p> <p>21 did not know about in advance?</p> <p>22 A. There are so many through the years,</p> <p>23 I don't – I don't – I don't recall every</p> <p>24 single one.</p> <p>25 Q. Okay. Can you identify any payment</p>	<p>Page 63</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 that was made against principal and interest on</p> <p>3 any note tendered by any affiliate or</p> <p>4 Mr. Dondero that you didn't know about in</p> <p>5 advance?</p> <p>6 A. I don't recall.</p> <p>7 Q. Other than Mr. Dondero – withdrawn.</p> <p>8 Did anybody at Highland have the</p> <p>9 authority to make a payment against principal</p> <p>10 and interest due under a loan given to the</p> <p>11 affiliates and Mr. Dondero without your</p> <p>12 knowledge and approval?</p> <p>13 MS. DANDENEAU: Objection to form.</p> <p>14 A. Sorry, there was – to make a</p> <p>15 payment on an affiliate loan, what you are</p> <p>16 saying would it require my knowledge and</p> <p>17 approval, yes.</p> <p>18 Q. Okay. I appreciate that. Thank</p> <p>19 you.</p> <p>20 Did anybody at Highland have the</p> <p>21 authority, to the best of your knowledge, to</p> <p>22 effectuate a loan to an affiliate without</p> <p>23 Mr. Dondero's prior knowledge and approval?</p> <p>24 MS. DANDENEAU: Objection to form.</p> <p>25 A. I can't speak for all, but</p>
<p>Page 64</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 generally, yes.</p> <p>3 Q. Did you personally communicate with</p> <p>4 Mr. Dondero to let him know each time a payment</p> <p>5 of principal or interest was being made against</p> <p>6 any note that was tendered by an affiliate or</p> <p>7 Mr. Dondero to Highland?</p> <p>8 A. I don't – are you saying, did I let</p> <p>9 Mr. Dondero know if a payment was made on any</p> <p>10 affiliate or loan to Mr. Dondero? I mean,</p> <p>11 not – not every – no.</p> <p>12 Q. Let me ask it this way: Did you</p> <p>13 have a practice of informing Mr. Dondero when</p> <p>14 payments were made against principal and</p> <p>15 interest on any note that was tendered by an</p> <p>16 affiliate or Mr. Dondero?</p> <p>17 MS. DEITSCH-PEREZ: Objection to</p> <p>18 form.</p> <p>19 MS. DANDENEAU: Objection to form.</p> <p>20 A. No, I did not.</p> <p>21 Q. Did Mr. Dondero ever tell you that a</p> <p>22 payment of principal or interest had been made</p> <p>23 against a note that was tendered by an</p> <p>24 affiliate or himself that he had been unaware</p> <p>25 of?</p>	<p>Page 65</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Not that I recall.</p> <p>3 Q. Are you aware that Mr. Dondero and</p> <p>4 the affiliates – withdrawn.</p> <p>5 Are you aware that Mr. Dondero</p> <p>6 NexPoint, HCRE, and HCMS all contend that they</p> <p>7 do not have to pay on any of the notes they</p> <p>8 issued because they are subject to an oral</p> <p>9 agreement between Mr. Dondero and Nancy</p> <p>10 Dondero, in her capacity as the trustee of the</p> <p>11 Dugaboy Investment Trust?</p> <p>12 MS. DANDENEAU: Objection to form.</p> <p>13 A. I didn't – I didn't – I didn't</p> <p>14 know that it was all notes.</p> <p>15 Q. Okay. Are you – did you ever learn</p> <p>16 that there was an oral agreement between Jim</p> <p>17 Dondero and Nancy Dondero pertaining to any</p> <p>18 notes issued by any affiliate or Mr. Dondero?</p> <p>19 MS. DEITSCH-PEREZ: Object to the</p> <p>20 form.</p> <p>21 A. Yes.</p> <p>22 Q. Do you have any understanding as to</p> <p>23 the terms of that agreement?</p> <p>24 A. Yes.</p> <p>25 Q. What is your understanding of the</p>

<p>Page 66</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 terms of the agreement?</p> <p>3 A. That there were certain milestones</p> <p>4 that had to be reached.</p> <p>5 Q. Do you have any understanding of the</p> <p>6 terms of the agreement between Mr. Dondero and</p> <p>7 Nancy Dondero concerning any of the notes</p> <p>8 issued by the affiliates or Mr. Dondero other</p> <p>9 than that there have to be milestones reached?</p> <p>10 MS. DEITSCH-PEREZ: Object to the</p> <p>11 form.</p> <p>12 A. There are milestones, I found out</p> <p>13 yesterday, or there was some –</p> <p>14 MS. DANDENEAU: Okay. I'm just</p> <p>15 going to object to the extent that you</p> <p>16 learned anything in conversations with</p> <p>17 counsel, please don't reveal – that is</p> <p>18 privileged, and don't reveal any privileged</p> <p>19 communications.</p> <p>20 THE WITNESS: Okay.</p> <p>21 A. So I'm not aware of anything else.</p> <p>22 Q. Do you know what the milestones</p> <p>23 were?</p> <p>24 MS. DANDENEAU: Objection to form.</p> <p>25 A. I don't.</p>	<p>Page 67</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Do you know anything about – do you</p> <p>3 know what promissory notes the agreement</p> <p>4 covered?</p> <p>5 A. I don't.</p> <p>6 Q. Do you know if – if Jim and Nancy</p> <p>7 Dondero entered into one agreement or more than</p> <p>8 one agreement?</p> <p>9 MS. DEITSCH-PEREZ: Object to the</p> <p>10 form.</p> <p>11 A. I don't know.</p> <p>12 Q. Do you know if the agreement is in</p> <p>13 writing?</p> <p>14 A. I don't know.</p> <p>15 Q. How did you learn of the existence</p> <p>16 of the agreement?</p> <p>17 MS. DANDENEAU: Objection to form.</p> <p>18 Again –</p> <p>19 A. I don't – I don't recall who told</p> <p>20 me.</p> <p>21 Q. You have no recollection of who told</p> <p>22 you about this agreement between Jim and Nancy</p> <p>23 Dondero?</p> <p>24 MS. DEITSCH-PEREZ: Object to the</p> <p>25 form.</p>
<p>Page 68</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I don't recall.</p> <p>3 Q. Do you recall how you learned of the</p> <p>4 agreement?</p> <p>5 Was it in a meeting? Was it in a</p> <p>6 phone call? Was it in an email?</p> <p>7 A. I don't recall.</p> <p>8 Q. Do you recall when you learned of</p> <p>9 the agreement?</p> <p>10 A. Not specifically.</p> <p>11 Q. Do you recall what year you learned</p> <p>12 of the agreement?</p> <p>13 A. In – look, I mean, there are so</p> <p>14 many notes. I may be getting – I believe it</p> <p>15 was 2020.</p> <p>16 Q. All right. I'm not asking about</p> <p>17 notes, sir. I'm asking about the agreement</p> <p>18 that you testified you knew about between Jim</p> <p>19 and Don- – Nancy Dondero. Okay.</p> <p>20 Do you understand my question now?</p> <p>21 Should I ask my question again?</p> <p>22 A. Yeah, sure. Go ahead.</p> <p>23 Q. I'm going to use the word</p> <p>24 "agreement" to refer to the agreement that</p> <p>25 Mr. Dondero and Nancy Dondero entered into</p>	<p>Page 69</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 where you understood that certain milestones</p> <p>3 had to be reached. Okay?</p> <p>4 A. Uh-huh.</p> <p>5 MS. DANDENEAU: Objection.</p> <p>6 MS. DEITSCH-PEREZ: Object to the</p> <p>7 form.</p> <p>8 MR. MORRIS: Just defining a term,</p> <p>9 what is the objection.</p> <p>10 MS. DEITSCH-PEREZ: The objection –</p> <p>11 MR. MORRIS: I will move on. I will</p> <p>12 move on.</p> <p>13 MS. DEITSCH-PEREZ: John –</p> <p>14 Q. Sir, are you okay with that</p> <p>15 definition of agreement?</p> <p>16 A. Okay.</p> <p>17 Q. Okay. So you don't recall who –</p> <p>18 who informed you of the existence of the</p> <p>19 agreement; is that right?</p> <p>20 A. I don't recall.</p> <p>21 Q. You don't recall who told you the</p> <p>22 terms of the agreement.</p> <p>23 Do I have that right?</p> <p>24 A. Correct.</p> <p>25 Q. And you don't recall if you learned</p>

<p>Page 70</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 about the agreement in a meeting, through an</p> <p>3 email, or through a phone call.</p> <p>4 Do I have that right?</p> <p>5 A. I don't recall.</p> <p>6 Q. Can you tell me when you learned of</p> <p>7 the agreement?</p> <p>8 A. I don't – I don't – I don't</p> <p>9 remember specifically.</p> <p>10 Q. Can you tell me if you learned of</p> <p>11 the agreement before or after the petition</p> <p>12 date?</p> <p>13 A. It would have been – it would have</p> <p>14 been after.</p> <p>15 Q. Can you tell me if you learned of</p> <p>16 the agreement before or after January 9th,</p> <p>17 2020?</p> <p>18 A. It would have been after.</p> <p>19 Q. Can you tell me if you learned of</p> <p>20 the agreement before or after you left Highland</p> <p>21 Capital Management in February of 2021?</p> <p>22 A. I don't – I don't – I don't know.</p> <p>23 Q. It is possible that you learned of</p> <p>24 it while you were a Highland employee.</p> <p>25 Do I have that right?</p>	<p>Page 71</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I don't remember the – I mean, it</p> <p>3 was sometime in 2021. I don't remember when.</p> <p>4 Q. All right. So to the best of your</p> <p>5 recollection, it was in 2021 but you don't</p> <p>6 recall if it was before or after you ceased to</p> <p>7 be a Highland employee.</p> <p>8 Do I have that right?</p> <p>9 A. Yeah, I mean, it was – it was</p> <p>10 likely after I was – after I left Highland</p> <p>11 because, if I put myself back into the last</p> <p>12 days of – of 2021, it was – you know, the</p> <p>13 communications with Mr. Dondero were – were –</p> <p>14 were – there weren't as many communications</p> <p>15 because of the circumstances.</p> <p>16 Q. And so based on that you believe</p> <p>17 that it is most likely that you learned of this</p> <p>18 agreement sometime after you left Highland</p> <p>19 employment?</p> <p>20 A. I wouldn't use the term "most</p> <p>21 likely." I don't recall specifically. I don't</p> <p>22 recall.</p> <p>23 Q. Do you recall ever telling Jim Seery</p> <p>24 about this agreement?</p> <p>25 A. No, I don't – I didn't tell</p>
<p>Page 72</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Jim Seery.</p> <p>3 Q. Did you tell anybody at DSI about</p> <p>4 this agreement?</p> <p>5 A. No.</p> <p>6 Q. Did you tell any of Highland's</p> <p>7 independent directors about this agreement?</p> <p>8 A. No.</p> <p>9 Q. Did you tell anybody at Pachulski</p> <p>10 Stang Ziehl & Jones about this agreement?</p> <p>11 A. No.</p> <p>12 Q. Did you tell any employee of</p> <p>13 Highland about this agreement?</p> <p>14 A. No.</p> <p>15 MS. DANDENEAU: Mr. Morris, it has</p> <p>16 been an hour and a half. Is this a good</p> <p>17 time for a break?</p> <p>18 MR. MORRIS: Sure.</p> <p>19 Q. Mr. Waterhouse, I will just remind</p> <p>20 you that during the break please don't speak</p> <p>21 with anybody about the deposition, the</p> <p>22 substance of your testimony or anything else</p> <p>23 concerning the deposition. Okay?</p> <p>24 A. Yes.</p> <p>25 MR. MORRIS: So it is 11:02. We're</p>	<p>Page 73</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 at 11:02 your time. Let's come back, I</p> <p>3 guess, at 15 – at 11:15 your time.</p> <p>4 VIDEOGRAPHER: We're going off the</p> <p>5 record at 11:02 a.m.</p> <p>6 (Recess taken 11:02 a.m. to 11:20 a.m.)</p> <p>7 VIDEOGRAPHER: We are back on the</p> <p>8 record at 11:20 a.m.</p> <p>9 Q. Mr. Waterhouse, did you speak with</p> <p>10 anybody during the break about this deposition?</p> <p>11 A. No.</p> <p>12 MS. DANDENEAU: Other than – other</p> <p>13 than his counsel.</p> <p>14 Q. Did you speak to your counsel about</p> <p>15 the substance of your deposition today?</p> <p>16 A. No, I didn't bring it up.</p> <p>17 Q. I didn't ask you if you brought it</p> <p>18 up. I asked you if you had any conversation</p> <p>19 with your lawyer about the substance of your</p> <p>20 deposition.</p> <p>21 MS. DANDENEAU: Yes, he did.</p> <p>22 Q. Can you tell me what the – you</p> <p>23 discussed?</p> <p>24 MS. DANDENEAU: No, I object to</p> <p>25 that. He's not going to answer. That is a</p>

<p style="text-align: right;">Page 74</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 privileged conversation.</p> <p>3 MR. MORRIS: So I just want to make</p> <p>4 sure that I understand. During the break</p> <p>5 you spoke with your client about the</p> <p>6 substance of this deposition; is that</p> <p>7 right?</p> <p>8 MS. DANDENEAU: Yes, John.</p> <p>9 MR. MORRIS: And you refuse – you</p> <p>10 refuse to let your client tell me what was</p> <p>11 discussed; is that right?</p> <p>12 MS. DANDENEAU: That's correct.</p> <p>13 MR. MORRIS: You know, I had given</p> <p>14 the instruction prior to the break not to</p> <p>15 speak with counsel. I would have</p> <p>16 appreciated –</p> <p>17 MS. DANDENEAU: No, you didn't –</p> <p>18 actually, that is not true, Mr. Morris.</p> <p>19 You said not to speak with anyone. We</p> <p>20 never have interpreted that to mean</p> <p>21 conversations with counsel. That's never</p> <p>22 been – I have never, ever heard that</p> <p>23 instruction.</p> <p>24 MR. MORRIS: Okay. We will – we</p> <p>25 will – we will deal with it when and if we</p>	<p style="text-align: right;">Page 75</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 have to.</p> <p>3 Q. Mr. Waterhouse, after learning about</p> <p>4 the agreement, did you ask anybody if the</p> <p>5 agreement was reflected in a writing?</p> <p>6 MS. DANDENEAU: Objection to form.</p> <p>7 A. No.</p> <p>8 Q. Did you ask anybody if the terms of</p> <p>9 the agreement were memorialized anywhere?</p> <p>10 MS. DANDENEAU: Objection to form.</p> <p>11 MR. MORRIS: What is the –</p> <p>12 A. No.</p> <p>13 MS. DANDENEAU: Well, because you</p> <p>14 keep talking about this agreement and I –</p> <p>15 I – I think, Mr. Morris, that is really</p> <p>16 not clear what you mean by "the agreement."</p> <p>17 And maybe you can just go back and restate</p> <p>18 what that is.</p> <p>19 MR. MORRIS: Okay. Your client has</p> <p>20 agreed with me twice on the definition, but</p> <p>21 I will try one more time.</p> <p>22 Q. Mr. Waterhouse, do you understand</p> <p>23 that when I use the term "agreement," I'm</p> <p>24 referring to the agreement between Jim and</p> <p>25 Nancy Dondero concerning certain promissory</p>
<p style="text-align: right;">Page 76</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 notes where you learned that one of the terms</p> <p>3 of the agreement was milestones reached?</p> <p>4 A. Okay.</p> <p>5 Q. And did you understand that that was</p> <p>6 the – the agreement that we were referring to</p> <p>7 every time we used the word "agreement" in this</p> <p>8 deposition?</p> <p>9 A. I don't know anything about this</p> <p>10 agreement. So, look, I do – it – I don't</p> <p>11 know whether –</p> <p>12 Q. Let's – let's try this again.</p> <p>13 A. Yeah. Look, I don't know what this</p> <p>14 agreement relates.</p> <p>15 MS. DEITSCH-PEREZ: John, John –</p> <p>16 Q. Let me try –</p> <p>17 MS. DEITSCH-PEREZ: John, please let</p> <p>18 the witness finish.</p> <p>19 MR. MORRIS: Please stop. Please</p> <p>20 stop. Please stop talking.</p> <p>21 MS. DEITSCH-PEREZ: No, you stop.</p> <p>22 Let the witness –</p> <p>23 MR. MORRIS: Stop talking.</p> <p>24 MS. DEITSCH-PEREZ: – finish – you</p> <p>25 interrupted him.</p>	<p style="text-align: right;">Page 77</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MR. MORRIS: You know what, you</p> <p>3 guys, this is really wrong. It is really,</p> <p>4 really wrong. Okay?</p> <p>5 I had the witness agree not once,</p> <p>6 but twice to the definition of agreement.</p> <p>7 Okay? I'm going to try and do it a third</p> <p>8 time.</p> <p>9 MS. DANDENEAU: No, but, please,</p> <p>10 John, really –</p> <p>11 MR. MORRIS: No, please stop</p> <p>12 talking. Please. It is my deposition.</p> <p>13 Object to questions.</p> <p>14 MS. DANDENEAU: No, but also you</p> <p>15 instructed him that – that if you were</p> <p>16 going – if you were interrupting him, that</p> <p>17 he should remind you that you're</p> <p>18 interrupting him and – and –</p> <p>19 MR. MORRIS: Let him do that. Let</p> <p>20 him do that.</p> <p>21 MS. DANDENEAU: Okay. Well, you –</p> <p>22 MR. MORRIS: Please stop talking.</p> <p>23 A. Okay. I don't know any of the</p> <p>24 details of these agreements. I don't know</p> <p>25 anything about them. I heard – someone – I</p>

<p>Page 78</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 don't know who, I don't know when, as you</p> <p>3 asked, sometime in '21, someone told me about</p> <p>4 this – or I don't honestly know – I don't</p> <p>5 even recall exactly how I was made aware of</p> <p>6 this, but I was. I don't know – I don't know</p> <p>7 any of these details, and I'm getting – again,</p> <p>8 there is, you know, I – I – I had a passing</p> <p>9 conversation with – with Jim at some point</p> <p>10 on – on some – on the executive comp, and I'm</p> <p>11 getting confused of what is what, because</p> <p>12 again, I don't know any of these details.</p> <p>13 Q. Okay. Let me try again,</p> <p>14 Mr. Waterhouse, and I apologize.</p> <p>15 Are you aware of any agreement</p> <p>16 between Jim Dondero and Nancy Dondero</p> <p>17 concerning any promissory note that was given</p> <p>18 to Highland by any affiliate or Mr. Dondero?</p> <p>19 MS. DEITSCH-PEREZ: Object to the</p> <p>20 form.</p> <p>21 A. I've heard of an agreement. That</p> <p>22 is – that is – I mean, if you are using aware</p> <p>23 as heard, sure.</p> <p>24 Q. And you understand that one of the</p> <p>25 terms of the agreement is that it was based on</p>	<p>Page 79</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 milestones that had to be reached; is that</p> <p>3 right?</p> <p>4 MS. DANDENEAU: Objection to form.</p> <p>5 A. That was one of the words that was</p> <p>6 used when I heard about it, yes.</p> <p>7 Q. And when you heard about this</p> <p>8 agreement that had a term in it concerning</p> <p>9 milestones reached, did you ask the person who</p> <p>10 was telling you about the agreement whether or</p> <p>11 not it was in writing?</p> <p>12 A. I did not.</p> <p>13 Q. Did you ask any questions at all?</p> <p>14 MS. DANDENEAU: Objection to form.</p> <p>15 A. Not that I recall.</p> <p>16 Q. But do you understand that going</p> <p>17 forward, we're going to refer to the agreement</p> <p>18 as the agreement that you just described that</p> <p>19 you were –</p> <p>20 MS. DANDENEAU: Object to the form.</p> <p>21 A. Yes.</p> <p>22 Q. Okay. You don't have any personal</p> <p>23 knowledge concerning the terms of the</p> <p>24 agreement; correct?</p> <p>25 MS. DEITSCH-PEREZ: Object to the</p>
<p>Page 80</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 form.</p> <p>3 Q. You can answer.</p> <p>4 A. I don't – I heard about the</p> <p>5 agreement. I don't know anything – I heard</p> <p>6 there was an agreement. That is – again, as I</p> <p>7 testified before – I said before, heard about</p> <p>8 it, don't know the details. I believe it was</p> <p>9 sometime this year.</p> <p>10 Q. Do you have any personal knowledge</p> <p>11 about the terms of the agreement, sir?</p> <p>12 MS. DANDENEAU: Objection to form.</p> <p>13 A. Other than what I have previously</p> <p>14 discussed, I don't – I don't know.</p> <p>15 Q. Did – did Mr. Dondero tell you</p> <p>16 about the existence of the agreement?</p> <p>17 A. I don't recall.</p> <p>18 Q. Do you recall the source of your</p> <p>19 information when you learned about the</p> <p>20 agreement?</p> <p>21 A. No, I don't – I don't recall. I</p> <p>22 don't remember. I just – I heard about it</p> <p>23 generally. I don't remember – I don't</p> <p>24 remember who, how, if, how. I don't remember.</p> <p>25 Q. You know, Mr. Waterhouse, I just</p>	<p>Page 81</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 want to be clear that I never would have asked</p> <p>3 you to appear at this deposition if your name</p> <p>4 hadn't been included in responses to discovery</p> <p>5 as to somebody with knowledge about the – who</p> <p>6 was told about the existence of the agreement.</p> <p>7 That is what prompted me do this,</p> <p>8 and I really do feel compelled to tell you that</p> <p>9 I otherwise would never have called you as a</p> <p>10 witness. So I regret that you're being put</p> <p>11 through this today. I had no intention of</p> <p>12 burdening you or taking your time, but that is</p> <p>13 the reason that we issued the subpoena is</p> <p>14 because certain of the defendants identified</p> <p>15 you as somebody –</p> <p>16 MS. DEITSCH-PEREZ: Mr. Morris, you</p> <p>17 are here to ask questions, not to have –</p> <p>18 MR. MORRIS: I feel badly for the</p> <p>19 guy. I really do.</p> <p>20 MS. DEITSCH-PEREZ: I'm sure you do.</p> <p>21 MR. MORRIS: I do. Stop.</p> <p>22 MS. DEITSCH-PEREZ: You stop.</p> <p>23 MR. MORRIS: I'm allowed.</p> <p>24 MS. DEITSCH-PEREZ: No, you're not</p> <p>25 allowed to have a chat with the witness.</p>

<p>Page 82</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. Well, I hope that you</p> <p>3 appreciate what I'm saying here,</p> <p>4 Mr. Waterhouse.</p> <p>5 MS. DANDENEAU: All right. Let's go</p> <p>6 ahead and ask questions, and again, you're</p> <p>7 entitled to probe his – his knowledge</p> <p>8 of – whatever knowledge he has about</p> <p>9 this – this agreement and –</p> <p>10 MR. MORRIS: That is what I'm doing.</p> <p>11 MS. DANDENEAU: – he will answer</p> <p>12 the questions to the best that he can.</p> <p>13 MR. MORRIS: That is what I'm doing.</p> <p>14 Q. Mr. Waterhouse, I take it you do not</p> <p>15 know which promissory notes issued by which</p> <p>16 affiliates or Mr. Dondero are the subject of</p> <p>17 this agreement; do I have that right?</p> <p>18 A. Yes, I don't – I don't know.</p> <p>19 Q. Do you know of any way to determine</p> <p>20 which promissory notes issued by the affiliates</p> <p>21 and Mr. Dondero are the subject of this</p> <p>22 agreement other than asking Jim or Nancy</p> <p>23 Dondero?</p> <p>24 MS. DANDENEAU: Objection to form.</p> <p>25 A. I don't know.</p>	<p>Page 83</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Did you ever make –</p> <p>3 A. I don't know anything about these</p> <p>4 agreements.</p> <p>5 Q. Did you ever make any effort to</p> <p>6 determine which promissory notes are subject to</p> <p>7 this agreement?</p> <p>8 A. No.</p> <p>9 Q. Did you ever ask anybody which</p> <p>10 promissory notes are subject to this agreement?</p> <p>11 A. No.</p> <p>12 Q. Do you know if there is a list</p> <p>13 anywhere of the promissory notes that are</p> <p>14 subject to this agreement?</p> <p>15 A. I'm not aware.</p> <p>16 Q. Have you ever seen the terms of the</p> <p>17 agreement written down anywhere?</p> <p>18 A. No.</p> <p>19 Q. Have you ever asked anybody whether</p> <p>20 the terms of the agreement were written down</p> <p>21 anywhere?</p> <p>22 A. I have not.</p> <p>23 Q. Did learning about the agreement</p> <p>24 cause you to do anything in response?</p> <p>25 MS. DANDENEAU: Objection to form.</p>
<p>Page 84</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. No.</p> <p>3 Q. Did anybody ever describe to you the</p> <p>4 nature of the milestones that you referred to</p> <p>5 earlier?</p> <p>6 A. No, I don't – I don't have any</p> <p>7 details of this.</p> <p>8 Q. That is fine.</p> <p>9 PricewaterhouseCoopers served as</p> <p>10 Highland's outside auditors prior to the</p> <p>11 petition date; correct?</p> <p>12 A. Yes.</p> <p>13 Q. You refer to PricewaterhouseCoopers</p> <p>14 as PwC?</p> <p>15 A. Yes.</p> <p>16 Q. PricewaterhouseCoopers audited</p> <p>17 Highland's financial statements on an annual</p> <p>18 basis; correct?</p> <p>19 A. During my – during my time as – as</p> <p>20 CFO, yes, PricewaterhouseCoopers was the</p> <p>21 auditor.</p> <p>22 Q. Do you know why Highland had its</p> <p>23 annual financial statements audited each year?</p> <p>24 A. Generally.</p> <p>25 Q. Tell me your general understanding</p>	<p>Page 85</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 as to the reason why Highland had its annual</p> <p>3 financial statements audited each year.</p> <p>4 A. From – from time to time, they were</p> <p>5 used – or asked for, as part of diligence or</p> <p>6 transactions or – or things of that nature.</p> <p>7 Q. And were they given to third parties</p> <p>8 for purposes of diligence or transactions from</p> <p>9 time to time?</p> <p>10 A. As far as I'm aware, yes.</p> <p>11 Q. And was it your understanding as the</p> <p>12 CFO that the third parties who received the</p> <p>13 financial statements in diligence or</p> <p>14 transactions was going to rely on those?</p> <p>15 MS. DANDENEAU: Objection to form.</p> <p>16 A. I don't know – I don't know gen –</p> <p>17 I don't know specifically what they were going</p> <p>18 to rely on. You know, we would get requests</p> <p>19 for audited financial statements. I don't know</p> <p>20 what they were relying on.</p> <p>21 Q. And –</p> <p>22 A. You would have to ask them.</p> <p>23 Q. Did you personally play a role in</p> <p>24 PwC's annual audit and the conduct of the</p> <p>25 audit?</p>

<p>Page 86</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MS. DANDENEAU: Objection to form.</p> <p>3 A. During my tenure as CFO, I played a</p> <p>4 very minimal role.</p> <p>5 Q. What was the minimal role that you</p> <p>6 played?</p> <p>7 A. You know, again, it was – it was to</p> <p>8 check in with the team, to make sure that, you</p> <p>9 know, audit – the deadlines were being hit,</p> <p>10 information was being presented to the auditors</p> <p>11 in a – in a timely fashion, but, you know,</p> <p>12 other than that, it was a very capable team</p> <p>13 that are still current employees of Highland</p> <p>14 and, you know, they – they conducted 99</p> <p>15 percent of – look, I don't want to give</p> <p>16 percentages. I mean, this is – but I – I –</p> <p>17 I played a minimal role towards the end.</p> <p>18 Before during my earlier years as</p> <p>19 CFO, I did more, and then as time went on, I</p> <p>20 did less in it.</p> <p>21 Q. Okay. Was there a person at</p> <p>22 Highland who was responsible for overseeing</p> <p>23 Highland's participation in PwC's audit during</p> <p>24 the time that you were the CFO?</p> <p>25 A. Yeah. I mean, there was – there</p>	<p>Page 87</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 was a – there was a point – it varies. It</p> <p>3 varies by year, in function, in time and, you</p> <p>4 know, depending on the request, but yes, I</p> <p>5 mean, there is – there is – there is</p> <p>6 generally a point person of communication.</p> <p>7 Q. And who was the point person from</p> <p>8 2016 until the time you left Highland?</p> <p>9 A. I don't – I don't know</p> <p>10 specifically, but it would have been, you</p> <p>11 know – you know, someone on the corporate</p> <p>12 accounting team.</p> <p>13 Q. And was there a head of the</p> <p>14 corporate accounting team?</p> <p>15 A. Yes, so – yes.</p> <p>16 Q. Who was the head of corporate</p> <p>17 accounting for the five years prior to the time</p> <p>18 you left Highland?</p> <p>19 A. I don't – if you're asking from</p> <p>20 2016 on, I don't – it was Dave Klos, but,</p> <p>21 again, there was – there was changes to the</p> <p>22 team and the reporting structure. I don't</p> <p>23 remember exactly when that happened during –</p> <p>24 you know, over the last – since 2016.</p> <p>25 Q. Did the folks who participated and</p>
<p>Page 88</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 ran the audit all report to you, directly or</p> <p>3 indirectly?</p> <p>4 A. Yes.</p> <p>5 Q. And did you have any responsibility</p> <p>6 for making sure that the audit report was</p> <p>7 accurate before it was finalized?</p> <p>8 A. Yeah. I mean, you know, that –</p> <p>9 that is – my responsibility to the auditors</p> <p>10 was – again, is – and the CFO is to – we are</p> <p>11 providing accurate financial statements; right?</p> <p>12 And – and – and as part of any</p> <p>13 audit, we disclose all relevant information as</p> <p>14 part of any audit.</p> <p>15 Q. Okay. And as the CFO, did you take</p> <p>16 steps to make sure that the audit report was</p> <p>17 accurate?</p> <p>18 A. I mean, I would say in a general</p> <p>19 sense, yes. But, again, I mean, I had a</p> <p>20 very – I had a very capable and competent</p> <p>21 team. I wasn't managing them.</p> <p>22 You know, part of what I do is I let</p> <p>23 the team – I want managers to grow. I want</p> <p>24 managers to have rope. And that is – you</p> <p>25 know, I'm not a stand-behind-you type of guy.</p>	<p>Page 89</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 If you – if you talk to my team members, I'm</p> <p>3 not micromanaging people. I want people to</p> <p>4 learn and grow in their function so they can go</p> <p>5 on and do bigger and better things with their</p> <p>6 careers.</p> <p>7 And so, yes, generally I was</p> <p>8 responsible for it, but I wanted the team to</p> <p>9 learn and grow and be responsible for the bulk</p> <p>10 of the audit.</p> <p>11 Q. Did you personally review each audit</p> <p>12 report before it was finalized to satisfy</p> <p>13 yourself that it was accurate?</p> <p>14 A. I don't – I don't recall, you know,</p> <p>15 for every single – we're talking 2016, there</p> <p>16 would have been three years, 2016 to '17, '18.</p> <p>17 I don't – we're – we're going back</p> <p>18 five years-plus. I don't – you know, I don't</p> <p>19 recall.</p> <p>20 Q. Did you have a practice that you</p> <p>21 employed to make sure that you were satisfied</p> <p>22 that Highland's audit reports were true and</p> <p>23 accurate to the best of your knowledge?</p> <p>24 A. I mean, our – the practice was set</p> <p>25 up with our – the – the practice to put</p>

<p>Page 90</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 together accurate audited or accurate financial</p> <p>3 statements is to your control environment.</p> <p>4 So, you know, the -- so the practice</p> <p>5 was to maintain a stable control environment</p> <p>6 which then the output is -- is accurate</p> <p>7 financial statements.</p> <p>8 So -- so, you know, if I was</p> <p>9 comfortable that the control environment was</p> <p>10 operating, then, you know, that would dictate</p> <p>11 how I would -- you know, what I might or might</p> <p>12 not do in a given year.</p> <p>13 Q. Okay. Do you recall ever being</p> <p>14 uncomfortable with the control environment</p> <p>15 during the period that you served as CFO?</p> <p>16 A. Yeah. I mean, look, yes, there are</p> <p>17 times -- you know, nothing is perfect. So</p> <p>18 there were -- there were times when, yes, you</p> <p>19 know -- there are times I learned I was</p> <p>20 uncomfortable with the control environment, and</p> <p>21 that is part of the management of the process</p> <p>22 and having, you know -- and -- and working</p> <p>23 through whatever obstacles present themselves.</p> <p>24 Q. Okay. Were you ever uncomfortable</p> <p>25 with the control process as it related to</p>	<p>Page 91</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 reporting and disclosures of loans to</p> <p>3 affiliates and Mr. Dondero?</p> <p>4 MS. DANDENEAU: Objection to form.</p> <p>5 A. I don't -- I don't recall --</p> <p>6 Q. So you don't recall --</p> <p>7 A. -- the --</p> <p>8 MS. DANDENEAU: Mr. Morris --</p> <p>9 A. I don't recall being uncomfortable.</p> <p>10 But, again, we're going back several years. I</p> <p>11 don't -- you know, the practice in an audit is</p> <p>12 to disclose all information to the auditors.</p> <p>13 And I don't -- I don't recall.</p> <p>14 Q. As part of the process of the audit,</p> <p>15 did you sign what is sometimes referred to as a</p> <p>16 management representation letter?</p> <p>17 A. Yes.</p> <p>18 MR. MORRIS: Can we put up on the</p> <p>19 screen a document that we have premarked as</p> <p>20 Exhibit 33.</p> <p>21 (Exhibit 33 marked.)</p> <p>22 MS. DANDENEAU: Mr. Morris, that is</p> <p>23 not in the binder; correct?</p> <p>24 MR. MORRIS: Correct.</p> <p>25 Q. So you will see, Mr. Waterhouse,</p>
<p>Page 92</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 this is a letter dated June 3rd. And if we</p> <p>3 could go to the signature page.</p> <p>4 And do you see that you and</p> <p>5 Mr. Dondero signed this document?</p> <p>6 A. Yes.</p> <p>7 Q. That is your signature; right?</p> <p>8 A. Yes.</p> <p>9 MR. MORRIS: Okay. Can you go back</p> <p>10 to the top.</p> <p>11 MS. DANDENEAU: Mr. Morris, can you</p> <p>12 have somebody post this in the chat so that</p> <p>13 we have can have a copy of this, please.</p> <p>14 MR. MORRIS: Yeah, sure. Asia, can</p> <p>15 you do that, please.</p> <p>16 Q. Okay. Do you see at the bottom of</p> <p>17 the second paragraph there is a reference to</p> <p>18 materiality?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. It says, Materiality used for</p> <p>21 purposes of these representations is</p> <p>22 \$1.7 million.</p> <p>23 Do you see that?</p> <p>24 A. I do.</p> <p>25 Q. And did PwC set that level of</p>	<p>Page 93</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 materiality?</p> <p>3 A. Yes.</p> <p>4 Q. And for purposes of the audit, did</p> <p>5 PwC set the level of materiality each year?</p> <p>6 A. Yes.</p> <p>7 Q. Did that number change over time?</p> <p>8 A. I'm not aware of what materiality is</p> <p>9 every single year, so -- but, you know, this</p> <p>10 number would likely fluctuate.</p> <p>11 Q. Okay. I'm going to go back to a</p> <p>12 question I asked you earlier today. And that</p> <p>13 is in connection -- this letter is issued in</p> <p>14 connection with the audit for the period ending</p> <p>15 12/31/2018; correct?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And is it fair to say that if</p> <p>18 any -- actually, withdrawn. I'm going to take</p> <p>19 it outside of this.</p> <p>20 If Highland ever forgave the loan to</p> <p>21 any affiliate or any of its officers or</p> <p>22 employees, in whole or in part, to the best of</p> <p>23 your knowledge, would that forgiveness have</p> <p>24 been disclosed in the audited financial</p> <p>25 statements if it exceeded the level of</p>

<p>Page 94</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 materiality that PwC established?</p> <p>3 MS. DANDENEAU: Objection to form.</p> <p>4 A. So, again, during my tenure as CFO,</p> <p>5 and – Highland – it was – it is required to</p> <p>6 disclose any affiliate loans that are in excess</p> <p>7 of materiality.</p> <p>8 Now, the forgiveness of those loans</p> <p>9 may or may not – I mean, since materiality</p> <p>10 fluctuates every year, a – you know, if a loan</p> <p>11 was forgiven, it may or may not, you know –</p> <p>12 and, look, I would want to consult the guidance</p> <p>13 around this.</p> <p>14 It is not something we do – you</p> <p>15 know, it is not – you know, GAAP can be and</p> <p>16 disclosures can be very specialized so, again,</p> <p>17 we want to consult the guidance. But we would</p> <p>18 see if and what would need to be disclosed if</p> <p>19 it were deemed immaterial.</p> <p>20 Q. Did you and Mr. Dondero sign</p> <p>21 management representation letters of this type</p> <p>22 in each year in which you served as Highland's</p> <p>23 CFO?</p> <p>24 A. I – I – I will speak for myself.</p> <p>25 I signed them. There may have been others that</p>	<p>Page 95</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 signed as well. I don't – I don't recall.</p> <p>3 Q. But to the best of your knowledge,</p> <p>4 you, personally, signed a management</p> <p>5 representation letter in connection with</p> <p>6 Highland's audit each year that you served as</p> <p>7 the CFO; correct?</p> <p>8 A. I would say generally speaking,</p> <p>9 Mr. Morris. I don't recall for every single</p> <p>10 year, you know, generally, but I would want to</p> <p>11 refer to all the rep letters and see who signed</p> <p>12 them.</p> <p>13 Q. Do you recall Highland having its</p> <p>14 financial statements audited in any year during</p> <p>15 the period that you were a CFO where you didn't</p> <p>16 sign the management representation letter?</p> <p>17 A. I don't recall. But, John, we're</p> <p>18 going back five, six, seven, eight, nine,</p> <p>19 decade. I don't – I don't remember.</p> <p>20 Q. I don't want to go back that many</p> <p>21 decades, but I'm just asking you if you recall</p> <p>22 that there was you didn't sign it?</p> <p>23 A. I – I – I don't, but my memory</p> <p>24 is – again, I – I – I can't tell you what I</p> <p>25 did in 2012. I mean, I think generally, yes,</p>
<p>Page 96</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 but I don't – I don't know for sure, and I</p> <p>3 would want to rely on the document.</p> <p>4 Q. Let me ask the question a little bit</p> <p>5 differently then.</p> <p>6 Do you have any reason to believe</p> <p>7 that Highland had its annual financial audit</p> <p>8 and you did not sign a management</p> <p>9 representation letter in connection with that</p> <p>10 audit?</p> <p>11 MS. DANDENEAU: Objection to form.</p> <p>12 A. I don't believe it would, but,</p> <p>13 again, I would want to – I don't recall and I</p> <p>14 would want to confirm it to – to make, you</p> <p>15 know, an affirmative – to give an affirmative</p> <p>16 answer.</p> <p>17 Q. Do you know whether PwC required</p> <p>18 management to sign management representation</p> <p>19 letters?</p> <p>20 MS. DANDENEAU: Objection to form.</p> <p>21 A. Yes. I mean, it – management</p> <p>22 representation letters are signed by</p> <p>23 management.</p> <p>24 Q. Okay. And you know – do you</p> <p>25 have any understanding as to why PwC requires</p>	<p>Page 97</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 management to sign management representation</p> <p>3 letters?</p> <p>4 MS. DEITSCH-PEREZ: Object to the</p> <p>5 form.</p> <p>6 A. I don't know why PwC's – what PwC's</p> <p>7 specific practice is. I know generally what</p> <p>8 management representation letters are.</p> <p>9 Q. Okay. Do you personally – I'm not</p> <p>10 asking about PwC. I'm asking for you – I'm</p> <p>11 asking about you, do you have an understanding</p> <p>12 as to why the auditor asks for management</p> <p>13 representation letters?</p> <p>14 A. Okay. So you're asking me in my</p> <p>15 personal capacity, yes, I have a general</p> <p>16 understanding of why.</p> <p>17 Q. Can you give me the general</p> <p>18 understanding that you have as to why</p> <p>19 management representation letters are required?</p> <p>20 A. They are – they are required to –</p> <p>21 they are – they are one of the items required</p> <p>22 in an audit to help verify completeness.</p> <p>23 Q. Do you have any – any other</p> <p>24 understanding as to why management</p> <p>25 representation letters are required?</p>

<p>Page 98</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. That is – that is – other than</p> <p>3 what I said, it is – it is – it is required</p> <p>4 so – to ensure that the – you know, there</p> <p>5 is – there is completeness in what is being</p> <p>6 audited.</p> <p>7 Q. Did you – did you have a practice</p> <p>8 whereby you and Mr. Dondero conferred about the</p> <p>9 management representation letters before you</p> <p>10 signed them?</p> <p>11 A. No.</p> <p>12 Q. Did you have a practice –</p> <p>13 withdrawn.</p> <p>14 Do you see just the next sentence</p> <p>15 after the materiality, there is a sentence that</p> <p>16 states: We confirm, to the best of our</p> <p>17 knowledge and belief, as of June 3rd, 2019, the</p> <p>18 date of your report, the following</p> <p>19 representations made to you during your audit.</p> <p>20 Do you see that sentence?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Did you understand when you</p> <p>23 signed this letter that you were confirming the</p> <p>24 representations that followed?</p> <p>25 A. When I signed this management</p>	<p>Page 99</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 letter – representation letter, yes.</p> <p>3 Q. Okay. Did you discuss this letter</p> <p>4 with Mr. Dondero before you signed it?</p> <p>5 A. I don't recall.</p> <p>6 Q. Do you recall if Mr. Dondero asked</p> <p>7 you any questions before he signed the letter?</p> <p>8 A. I don't recall.</p> <p>9 Q. Do you recall if you asked</p> <p>10 Mr. Dondero any questions before you signed</p> <p>11 this letter?</p> <p>12 A. I don't recall.</p> <p>13 Q. Is it fair to say that Mr. Dondero</p> <p>14 did not disclose to you the existence of the</p> <p>15 agreement that we have – as we've defined that</p> <p>16 term prior to the time you signed this letter?</p> <p>17 MS. DANDENEAU: Objection to form.</p> <p>18 A. I don't think I understand the</p> <p>19 question. So, again, you are saying, did</p> <p>20 Mr. Dondero not disclose to me the existence of</p> <p>21 this letter?</p> <p>22 Q. No, I apologize.</p> <p>23 Did Mr. Dondero disclose to you the</p> <p>24 existence of the agreement prior to the time</p> <p>25 you signed this letter on June 3rd, 2019?</p>
<p>Page 100</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. The agreement – the agreement that</p> <p>3 we talked about earlier?</p> <p>4 Q. Correct.</p> <p>5 A. Look, as I said earlier, the first</p> <p>6 time I heard of this agreement was sometime</p> <p>7 this year.</p> <p>8 Q. Okay. Can we turn – let's just</p> <p>9 look at a couple of items on the list. If we</p> <p>10 can go to page 33416. Do you see in Number 35</p> <p>11 it talks about the proper recording or</p> <p>12 disclosure in the financial statements of ND</p> <p>13 relationships and transactions with related</p> <p>14 parties.</p> <p>15 Do you see that?</p> <p>16 A. I do.</p> <p>17 Q. As the CFO, do you have any</p> <p>18 understanding as to whether Dugaboy is a</p> <p>19 related party?</p> <p>20 A. I don't recall.</p> <p>21 Q. Do you know whether any of the</p> <p>22 affiliates are related parties?</p> <p>23 A. If – if it was NexPoint, HCMFA,</p> <p>24 HCMS, HCRE, yeah, if – if that is the</p> <p>25 affiliate definition, and there. In ASC 850 –</p>	<p>Page 101</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 again, I mean, I haven't looked at ASC 850 in</p> <p>3 quite some time, but, you know, if – if there</p> <p>4 is a control language, you know, ASC 850, would</p> <p>5 that – that section in GAAP would – would</p> <p>6 pick up and define what are related parties.</p> <p>7 So, you know, like I said, if – one</p> <p>8 of the four entities I just described, if – if</p> <p>9 they are in that control definition of ASC 850,</p> <p>10 they would be picked up in 35D.</p> <p>11 Q. Do you – do you have any reason to</p> <p>12 believe that they would be picked up in that</p> <p>13 definition, based on your knowledge and</p> <p>14 experience?</p> <p>15 A. I – I believe that entities</p> <p>16 controlled under GAAP are – are affiliates.</p> <p>17 Q. Okay. Would Mr. Dondero also</p> <p>18 qualify as a related party for purposes of</p> <p>19 Section 35D, to the best of your knowledge?</p> <p>20 A. Yeah, I don't – I don't know. I</p> <p>21 would think – I would have to read the code</p> <p>22 section to see if someone personally – is it</p> <p>23 talking about related parties. So, look, if</p> <p>24 your own in control, yeah, I mean, I would have</p> <p>25 to read the section.</p>

<p>Page 102</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. To the best of your knowledge, was</p> <p>3 the existence of the agreement ever disclosed</p> <p>4 to PwC?</p> <p>5 A. I'm not – I'm not aware.</p> <p>6 Q. Do you recall if the agreement was</p> <p>7 ever disclosed in Highland's audited financial</p> <p>8 statements?</p> <p>9 A. I don't – I don't remember if it</p> <p>10 was in every Highland's audited financial</p> <p>11 statements during my tenure. We would have to</p> <p>12 read the financial statements to see what was</p> <p>13 disclosed, but I'm not – I mean, as I sit here</p> <p>14 today, I'm not aware.</p> <p>15 Q. That is all I'm asking for.</p> <p>16 A. I'm not aware.</p> <p>17 Q. Can we go to the next page, please,</p> <p>18 and look at 36. 36 says, we have disclosed to</p> <p>19 you the identity of the partnership's related</p> <p>20 party relationships and all the related party</p> <p>21 relationships and transactions of which we are</p> <p>22 aware.</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. To the best of your knowledge, as of</p>	<p>Page 103</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 June 3rd, 2019, did Highland disclose to PwC</p> <p>3 the identity of the partnership's related</p> <p>4 parties and all the related party relationships</p> <p>5 and transactions of which it was aware?</p> <p>6 A. I mean, I can speak for myself as</p> <p>7 signer of this representation letter. I</p> <p>8 disclosed what – what, you know, what –</p> <p>9 what – what I knew. Sorry, look, yes, so I –</p> <p>10 I disclosed what I knew.</p> <p>11 Q. Okay. Can we go to page 419. Do</p> <p>12 you see at the end there is a reference to</p> <p>13 events that occurred since the end of the</p> <p>14 fiscal year and the date of the letter?</p> <p>15 A. Yes.</p> <p>16 Q. And were you aware of that – of</p> <p>17 that provision of the management representation</p> <p>18 letter before you signed the document?</p> <p>19 A. Yes.</p> <p>20 Q. Do you have an understanding as to</p> <p>21 why PwC asked for that confirmation of that</p> <p>22 particular part of the management</p> <p>23 representation letter?</p> <p>24 A. It is – it is – it is just – it</p> <p>25 is a typical audit request.</p>
<p>Page 104</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. And do you understand – do you have</p> <p>3 an understanding that PwC wanted to know that</p> <p>4 as of the date of the audit whether any</p> <p>5 material changes had occurred since the end of</p> <p>6 the fiscal year, using the definition of</p> <p>7 materiality that is in this particular</p> <p>8 management representation letter?</p> <p>9 A. It – it is – it is – it is a –</p> <p>10 it is as described. It is just a poorly worded</p> <p>11 question, so it is hard for me to say yes.</p> <p>12 Q. If I asked you this, I apologize,</p> <p>13 but did you ever learn when the agreement was</p> <p>14 entered into?</p> <p>15 A. I don't – I don't – like I said</p> <p>16 before, I don't know or have any details of the</p> <p>17 agreement.</p> <p>18 Q. Okay. Did you ever ask anybody when</p> <p>19 the agreement was entered into?</p> <p>20 A. I did not.</p> <p>21 Q. Let's look at the audited financial</p> <p>22 statements. We will put up on the screen a</p> <p>23 document that has been premarked as Exhibit 34.</p> <p>24 (Exhibit 34 marked.)</p> <p>25 MS. DANDENEAU: And again, if Ms. La</p>	<p>Page 105</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Cauty could please put that in the chat</p> <p>3 room, that would be great.</p> <p>4 MR. MORRIS: I will assure you we</p> <p>5 will put every document in the chat room.</p> <p>6 Q. Now, I'm just going to ask you</p> <p>7 questions that are related to the provisions of</p> <p>8 this report that concern the affiliate loans,</p> <p>9 but again, Mr. Waterhouse, if there is any part</p> <p>10 of the document that you need to see or that</p> <p>11 you think you might need to see in order to</p> <p>12 refresh your recollection to answer any of my</p> <p>13 questions, will you let me know that?</p> <p>14 A. Yes.</p> <p>15 Q. Because this is a pretty lengthy</p> <p>16 document, but do you see that the cover page</p> <p>17 here is the Highland consolidated financial</p> <p>18 statements for the period ending December 31st,</p> <p>19 2018?</p> <p>20 A. Yes.</p> <p>21 Q. If we can go to – I think it is the</p> <p>22 next one, looking for PwC's signature line.</p> <p>23 MS. CANTY: I'm sorry, John, did you</p> <p>24 say something?</p> <p>25 MR. MORRIS: Yes, can we turn the</p>

<p>Page 106</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 page. I think it is 215. Yes, stop right</p> <p>3 there, just above – I'm sorry, I want to</p> <p>4 see just the date of the report.</p> <p>5 Q. Okay. Do you see at the bottom of</p> <p>6 that page there, Mr. Waterhouse,</p> <p>7 PricewaterhouseCoopers has signed this audit</p> <p>8 report?</p> <p>9 A. Yes, I see their signature.</p> <p>10 Q. Okay. And it is the dated same day</p> <p>11 as your management representation letter; is</p> <p>12 that right?</p> <p>13 A. It is – yes, it is the same day.</p> <p>14 Q. Was that the practice to sign the</p> <p>15 management representation letter on the same</p> <p>16 day that the audit report was signed?</p> <p>17 A. Yes, that is typical in every audit.</p> <p>18 Q. Can we just scroll down to the</p> <p>19 balance sheet on the next page.</p> <p>20 Do you see that there is a line</p> <p>21 there that says, Notes and Other Amounts Due</p> <p>22 from Affiliates?</p> <p>23 A. Yes.</p> <p>24 Q. Does that line, to the best of your</p> <p>25 knowledge, include the amounts that were due</p>	<p>Page 107</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 under the affiliate under the notes signed by</p> <p>3 the affiliates and Mr. Dondero?</p> <p>4 MR. RUKAVINA: Objection to the</p> <p>5 extent that calls for a legal conclusion.</p> <p>6 A. I mean, I would want to see the</p> <p>7 detail and the build to this \$173,398,000, but,</p> <p>8 yes, I mean, if – if – given what we</p> <p>9 discussed before, you know, it – it should</p> <p>10 capture that.</p> <p>11 Q. And – and while you were the CFO of</p> <p>12 Highland, were all notes held by Highland that</p> <p>13 were issued by an affiliate or Mr. Dondero</p> <p>14 carried as assets on Highland's balance sheets?</p> <p>15 MS. DANDENEAU: Objection to form.</p> <p>16 MS. DEITSCH-PEREZ: Object to form.</p> <p>17 A. I don't – I don't know how else</p> <p>18 they would be carried.</p> <p>19 Q. Okay. Can you think of any – are</p> <p>20 you aware of any promissory note issued by an</p> <p>21 affiliate or Mr. Dondero that was not carried</p> <p>22 on Highland's audited financial balance sheets?</p> <p>23 A. I'm – I'm – I'm not aware.</p> <p>24 Q. Okay. Are you aware of any category</p> <p>25 of asset on Highland's balance sheet in which</p>
<p>Page 108</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 any of the promissory notes issued by an</p> <p>3 affiliate or Mr. Dondero would have been</p> <p>4 included?</p> <p>5 MS. DANDENEAU: Objection to form.</p> <p>6 A. Sorry, am I aware of any asset of an</p> <p>7 affiliate being included –</p> <p>8 Q. That – let me – let me try again.</p> <p>9 Do you see there is a number of</p> <p>10 different assets that are described on this</p> <p>11 balance sheet?</p> <p>12 A. Yes.</p> <p>13 Q. One of the assets that is described</p> <p>14 is Notes and Other Amounts Due from Affiliates;</p> <p>15 right?</p> <p>16 A. Yes.</p> <p>17 Q. And it is reasonable to conclude</p> <p>18 that the notes from the affiliates and</p> <p>19 Mr. Dondero are included in that line item;</p> <p>20 right?</p> <p>21 A. Yes, based on this description.</p> <p>22 Again, I would want to see a build of this to</p> <p>23 100 percent confirm, but based on the</p> <p>24 description, the asset description, it is – it</p> <p>25 is likely.</p>	<p>Page 109</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Now, does that mean absolute? I</p> <p>3 don't know.</p> <p>4 Q. Do you have any reason to believe</p> <p>5 that the promissory notes would have been</p> <p>6 carried on the balance sheet in a category</p> <p>7 other than Notes and Other Amounts Due from</p> <p>8 Affiliates?</p> <p>9 A. If they were deemed – no. If they</p> <p>10 were deemed an affiliate, you know, under GAAP,</p> <p>11 they should be carried in that line.</p> <p>12 Otherwise, it would go into another line.</p> <p>13 Q. Okay. And do you see the total</p> <p>14 asset base as of December 31st, 2018, was</p> <p>15 approximately \$1.04 billion?</p> <p>16 A. Yes.</p> <p>17 Q. Is my math correct that the Notes</p> <p>18 and Other Amounts Due from Affiliates</p> <p>19 constituted approximately 17 percent of</p> <p>20 Highland's assets as of the end of 2018?</p> <p>21 A. Well, so how are you defining</p> <p>22 Highland?</p> <p>23 Q. Highland Capital Management, L.P.,</p> <p>24 the entity that this audit is subject to – or</p> <p>25 the subject of.</p>

<p>Page 110</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. On a consolidated or unconsolidated</p> <p>3 basis?</p> <p>4 Q. I'm looking at the balance sheet.</p> <p>5 It is a consolidated balance sheet. Okay?</p> <p>6 Does the Notes and Other Amounts Due</p> <p>7 from Affiliates constitute approximately</p> <p>8 17 percent of the total assets of Highland</p> <p>9 Capital Management, L.P., on a consolidated</p> <p>10 basis?</p> <p>11 MS. DANDENEAU: Objection to form.</p> <p>12 A. I don't have a calculator in front</p> <p>13 of me but I will take your math, if you are</p> <p>14 taking the 173 divided by the billion.</p> <p>15 Q. Okay.</p> <p>16 A. If that is accurate, yes. But,</p> <p>17 again, on a consolidated basis.</p> <p>18 Q. And on an unconsolidated basis the</p> <p>19 percentage would be higher; correct?</p> <p>20 A. I – no. I don't know.</p> <p>21 Q. Well, okay. That is fair.</p> <p>22 MR. MORRIS: Can we turn to</p> <p>23 page 241, please.</p> <p>24 Q. Do you see that this is a section of</p> <p>25 the audit report that is entitled Notes and</p>	<p>Page 111</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Other Amounts Due from Affiliates?</p> <p>3 A. Sorry, I can't see the – the –</p> <p>4 Q. It is at the top.</p> <p>5 A. Notes and Other Amounts Due from</p> <p>6 Affiliates, yes, I see that. I don't – I</p> <p>7 don't have a page number, but I'm on a page</p> <p>8 that says at the top: Notes and Other Amounts</p> <p>9 Due from Affiliates.</p> <p>10 Q. Okay. And that is the same title of</p> <p>11 the line item on the balance sheet that we just</p> <p>12 looked at; right? Notes and Other Amounts Due</p> <p>13 from Affiliates?</p> <p>14 A. Yes.</p> <p>15 Q. And is it your understanding, based</p> <p>16 on your experience and knowledge as the CFO,</p> <p>17 that this is the section of the narrative that</p> <p>18 ties into the line item that we just looked at?</p> <p>19 A. Yes.</p> <p>20 Q. And is this section of the audit</p> <p>21 report intended to describe and disclose all of</p> <p>22 the material facts concerning the Notes and</p> <p>23 Other Amounts Due from Affiliates?</p> <p>24 MS. DANDENEAU: Objection, form.</p> <p>25 A. This – these notes – these notes</p>
<p>Page 112</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 of the financial statements are – the purpose</p> <p>3 is to disclose any material items in relation</p> <p>4 to that balance sheet line item.</p> <p>5 Q. Okay. And all of the information,</p> <p>6 to the best of your knowledge, that is set</p> <p>7 forth in this section of the audit report was</p> <p>8 provided by Highland; correct?</p> <p>9 A. Yes, it would have been provided by</p> <p>10 the corporate accounting team.</p> <p>11 Q. Okay. And the corporate accounting</p> <p>12 team, did that team report to you in the</p> <p>13 organizational structure?</p> <p>14 A. Yes.</p> <p>15 Q. And did you have any concerns about</p> <p>16 the controls that were in place to make sure</p> <p>17 that the information provided with respect to</p> <p>18 Notes and Other Amounts Due from Affiliates was</p> <p>19 accurate and complete?</p> <p>20 MS. DANDENEAU: Objection to form.</p> <p>21 A. Not that I recall.</p> <p>22 Q. Okay. Do you recall ever being</p> <p>23 concerned that any portion of the Notes and</p> <p>24 Other Amounts Due from Affiliates in any audit</p> <p>25 report was inaccurate, incomplete, or not</p>	<p>Page 113</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 reliable?</p> <p>3 A. I didn't – I had concerns about,</p> <p>4 you know, like I talked about before, of there</p> <p>5 were – there were potentially issues in the</p> <p>6 control environment. But as far as it relates</p> <p>7 to the audited financial statements, any – the</p> <p>8 team would work with the auditors to disclose</p> <p>9 all – all notes in Highland's possession.</p> <p>10 And any – any notes that were</p> <p>11 deemed material by the auditor, right, these</p> <p>12 were disclosed in these – in this section, you</p> <p>13 know, in – in the notes to the consolidated</p> <p>14 financial statements as you presented.</p> <p>15 Q. Do you recall ever having a</p> <p>16 conversation with anybody at any time</p> <p>17 concerning the accuracy of the section of audit</p> <p>18 reports that relates to Notes and Other Amounts</p> <p>19 Due from Affiliates?</p> <p>20 MS. DANDENEAU: Objection to form.</p> <p>21 A. You know, as – as – I didn't have</p> <p>22 direct conversations with</p> <p>23 PricewaterhouseCoopers as I had, you know –</p> <p>24 I – I had the team that managed this.</p> <p>25 Again, I wasn't anywhere chose to</p>

<p>Page 114</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 being the point person of this audit. And I</p> <p>3 can't recall, you know, when – you know, I</p> <p>4 don't even know if I was ever the point person</p> <p>5 during my tenure as CFO.</p> <p>6 I don't know if PwC had any concerns</p> <p>7 when they were performing those audit</p> <p>8 procedures. They may have and they may have –</p> <p>9 and it may not have been communicated to me. I</p> <p>10 don't know.</p> <p>11 MR. MORRIS: All right. I move to</p> <p>12 strike.</p> <p>13 Q. And I'm going to ask you to listen</p> <p>14 carefully to my question.</p> <p>15 Did you – do you recall ever having</p> <p>16 a conversation with anybody at any time</p> <p>17 concerning the accuracy of the reporting</p> <p>18 provided in the audited financial statement on</p> <p>19 the topic of Notes and Other Amounts Due?</p> <p>20 MS. DANDENEAU: Objection to form.</p> <p>21 A. I don't recall for this, but that</p> <p>22 doesn't mean that it didn't exist.</p> <p>23 Q. Okay. But you have no reason to</p> <p>24 believe, as you sit here right now, that you</p> <p>25 ever discussed with anybody concerns over the</p>	<p>Page 115</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 accuracy of the section of the audit reports</p> <p>3 called Notes and Other Amounts Due from</p> <p>4 Affiliates; correct?</p> <p>5 MS. DANDENEAU: Object to the form.</p> <p>6 MS. DEITSCH-PEREZ: Objection to</p> <p>7 form.</p> <p>8 A. I don't recall having any</p> <p>9 conversations. But, again, I mean, this is –</p> <p>10 this is two years ago.</p> <p>11 Q. I'm just asking for your</p> <p>12 recollection, sir.</p> <p>13 A. Yes.</p> <p>14 Q. If you don't recall, this will –</p> <p>15 A. Yeah.</p> <p>16 Q. (Overspeak) – if you don't</p> <p>17 recall –</p> <p>18 A. Yeah, I don't – I don't recall.</p> <p>19 Q. Do you know who was responsible for</p> <p>20 drafting the audit report?</p> <p>21 A. Are you asking the actual Highland</p> <p>22 employee responsible? I mean, it was</p> <p>23 Highland's responsibility, so, I mean, that</p> <p>24 is –</p> <p>25 Q. Right.</p>
<p>Page 116</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. – Highland's responsibility.</p> <p>3 Highland's responsibility.</p> <p>4 Q. Who, at Highland, was responsible</p> <p>5 for drafting this section of the audit report?</p> <p>6 A. I – I don't know the answer to</p> <p>7 that. Again, there was a team who worked on</p> <p>8 this. And I don't know, you know, whether it</p> <p>9 was the staff or the manager.</p> <p>10 Again, this is where I let the teams</p> <p>11 manage. And, you know, there may be a</p> <p>12 corporate accountant who worked on this. I</p> <p>13 just – you know, I wasn't part of that process</p> <p>14 to give that person experience. I don't know.</p> <p>15 Q. Do you recall having any</p> <p>16 communications with anybody at any time</p> <p>17 concerning this section of the report?</p> <p>18 A. Yeah, I don't recall.</p> <p>19 Q. Do you recall whether you ever told</p> <p>20 anybody at any time that any aspect of this</p> <p>21 section of the report was inaccurate or</p> <p>22 incomplete?</p> <p>23 A. I don't recall.</p> <p>24 Q. As you sit here today, do you have</p> <p>25 any reason to believe that this section of the</p>	<p>Page 117</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 audit report is incomplete or inaccurate in any</p> <p>3 way?</p> <p>4 And I'm happy to give you a moment</p> <p>5 to – to look at it, if you would like.</p> <p>6 MS. DANDENEAU: Objection to form.</p> <p>7 MS. DEITSCH-PEREZ: Same.</p> <p>8 A. I mean, I would have to look at – I</p> <p>9 would have to look at the bill to the note</p> <p>10 schedule to make sure I know you presented me</p> <p>11 with materiality, but again, there might be a</p> <p>12 note as of 12/31/18 that somehow was – was</p> <p>13 under materiality not disclosed. I don't – I</p> <p>14 don't know. I would need more information.</p> <p>15 Q. Okay. But without more information,</p> <p>16 you have no reason to believe anything this</p> <p>17 section is inaccurate; correct?</p> <p>18 MS. DANDENEAU: Objection to form.</p> <p>19 A. I don't. I mean, you know, this was</p> <p>20 part of the audit.</p> <p>21 Q. Thank you. Now, you will see if we</p> <p>22 could scroll just a little bit more that each</p> <p>23 of the first five paragraphs concerns</p> <p>24 specifically the four affiliates that we've</p> <p>25 been discussing and Mr. Dondero.</p>

<p>Page 118</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MR. MORRIS: If we could go the</p> <p>3 other way, La Asia. We don't need Okada.</p> <p>4 We're going to have to thread the needle.</p> <p>5 Okay. Good, perfect.</p> <p>6 Q. Do you see those five paragraphs</p> <p>7 certain the four affiliates and Mr. Dondero as</p> <p>8 we've been referring to today?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And do you see at the end of</p> <p>11 every paragraph it states, quote: A fair value</p> <p>12 of a partnership's outstanding notes receivable</p> <p>13 approximates the carrying value of the notes</p> <p>14 receivable?</p> <p>15 A. Yes, I see that.</p> <p>16 Q. Do you have an understanding of what</p> <p>17 that means?</p> <p>18 A. Yes.</p> <p>19 Q. What is your understanding of that</p> <p>20 sentence?</p> <p>21 A. It is the -- again, the -- the fair</p> <p>22 value, right, which is -- which is what the --</p> <p>23 what Highland could sell that asset for. This</p> <p>24 statement is comparing the fair value of the</p> <p>25 notes to the carrying value, so the carrying</p>	<p>Page 119</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 value is the line item that you showed me</p> <p>3 earlier that is in Notes and Other Amounts Due</p> <p>4 from Affiliates.</p> <p>5 Q. Okay. Is another way to say this is</p> <p>6 that the fair market value of the notes equals</p> <p>7 the principal amount and -- withdrawn.</p> <p>8 Is the fair way to interpret this</p> <p>9 that the fair market value of the notes equals</p> <p>10 all remaining unpaid principal and interest due</p> <p>11 under the notes?</p> <p>12 MS. DANDENEAU: Object to the form.</p> <p>13 MS. DEITSCH-PEREZ: Objection, form.</p> <p>14 A. I don't know the answer to that,</p> <p>15 because I don't recall where -- where any --</p> <p>16 where -- in what line item was the interest</p> <p>17 component reported.</p> <p>18 Q. All right. Well, if we look in this</p> <p>19 audit report, you will see in the middle of the</p> <p>20 first paragraph, for example, it states that as</p> <p>21 of December 31st, 2018, total interest and</p> <p>22 principal due on outstanding promissory notes</p> <p>23 was approximately \$5.3 million.</p> <p>24 Do you see that?</p> <p>25 A. I do.</p>
<p>Page 120</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Is that the carrying value or the</p> <p>3 fair value?</p> <p>4 A. That would be the carrying value --</p> <p>5 Q. And is the last --</p> <p>6 A. -- in my opinion.</p> <p>7 Q. Okay. And it is in your opinion as</p> <p>8 the chief financial officer of Highland during</p> <p>9 the period of time that you described; right?</p> <p>10 It is an educated opinion?</p> <p>11 A. I'm reading this at face value. I'm</p> <p>12 taking that as that is carrying value.</p> <p>13 Q. Okay. And does the last sentence</p> <p>14 say that the carrying value is roughly</p> <p>15 approximate to the fair market value?</p> <p>16 MS. DANDENEAU: Objection to form.</p> <p>17 MS. DEITSCH-PEREZ: Objection, form.</p> <p>18 A. Again, this note to the financial</p> <p>19 statement is specific to notes and other</p> <p>20 amounts due from affiliates.</p> <p>21 Q. Correct.</p> <p>22 A. If the interest component is</p> <p>23 reported elsewhere on the balance sheet, you</p> <p>24 know, it -- it -- it could be off. Again, I</p> <p>25 don't have the detail. I don't know, but yes,</p>	<p>Page 121</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 look, I mean, if you -- I mean, if you are</p> <p>3 saying the 5.3 million is in the notes and</p> <p>4 other amounts due from affiliates, then the</p> <p>5 last statement is saying the fair value</p> <p>6 approximates 5.3 million. That is what that</p> <p>7 last sentence is saying.</p> <p>8 Q. Do you see in the middle of the</p> <p>9 first paragraph -- not in the middle, the next</p> <p>10 to last sentence there is a statement that the</p> <p>11 partnership will not demand payment on amounts</p> <p>12 that exceed HCMFA's excess cash availability</p> <p>13 prior to May 31st, 2021.</p> <p>14 Do you see that?</p> <p>15 A. I do.</p> <p>16 Q. Do you know when Highland agreed not</p> <p>17 to demand payment as described in that</p> <p>18 sentence?</p> <p>19 A. I don't know specifically.</p> <p>20 Q. Do you know why Highland agreed not</p> <p>21 to demand payment on HCMFA's notes until May</p> <p>22 2021?</p> <p>23 A. Yes.</p> <p>24 Q. Why was that decision made?</p> <p>25 A. You know, well, it -- it -- that</p>

<p>Page 122</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 decision was made as to not put HCMFA into a</p> <p>3 position where it didn't have sufficient assets</p> <p>4 to pay for the demand note.</p> <p>5 Q. And at the time the agreement was</p> <p>6 entered into, pursuant to which the partnership</p> <p>7 wouldn't demand payment, did HCMFA have</p> <p>8 insufficient assets to satisfy the notes if a</p> <p>9 demand had been made?</p> <p>10 MS. DANDENEAU: Objection to form.</p> <p>11 A. I don't have HCMFA's financial</p> <p>12 statements in front of me as of 12/31/18.</p> <p>13 Q. Was there a concern that HCMFA would</p> <p>14 be unable to satisfy its demands under the</p> <p>15 notes if demand was made?</p> <p>16 MS. DANDENEAU: Objection to form.</p> <p>17 A. Well, there is – I don't recall –</p> <p>18 I mean, there is something, right, in place to</p> <p>19 basically not demand payment until May 31, 2021</p> <p>20 as detailed here.</p> <p>21 Q. And who made the decision to enter</p> <p>22 into – who made the decision on behalf of</p> <p>23 Highland not to demand payment until May 31st,</p> <p>24 2021?</p> <p>25 A. I'm trying to remember. I don't</p>	<p>Page 123</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 remember exactly – I don't remember if it was</p> <p>3 myself or – or Jim Dondero who – who – there</p> <p>4 was – there was something signed, from what I</p> <p>5 recall, that – that – that backed up this</p> <p>6 line item in the – in the notes I'm – look,</p> <p>7 I'm, I'm –</p> <p>8 Q. We will get to that.</p> <p>9 A. You –</p> <p>10 Q. I'm just –</p> <p>11 A. You have – I mean –</p> <p>12 Q. We're going to give that to you.</p> <p>13 I'm going to give that to you.</p> <p>14 A. You – you – you have all the</p> <p>15 documents. I don't have the documents, and</p> <p>16 that is what makes it so hard. I don't have</p> <p>17 any documents to prepare for this deposition;</p> <p>18 right? You have all – I don't – I don't – I</p> <p>19 don't remember, but, you know, again, it would</p> <p>20 probably be myself or Jim.</p> <p>21 Q. Do you know if Highland received</p> <p>22 anything in return for its agreement not to</p> <p>23 make a demand for two years?</p> <p>24 A. I don't – I don't think it referred</p> <p>25 anything.</p>
<p>Page 124</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. And did you and Mr. Dondero discuss</p> <p>3 HCMFA's ability to satisfy the notes if a</p> <p>4 demand was made at the time this agreement was</p> <p>5 entered into?</p> <p>6 MS. DANDENEAU: Objection to form.</p> <p>7 A. I don't – I don't – I don't recall</p> <p>8 having a specific conversation, if I did, or –</p> <p>9 or David Klos.</p> <p>10 Q. Okay. I'm just asking if you recall</p> <p>11 any conversations that you had.</p> <p>12 A. I don't recall.</p> <p>13 Q. Okay. Do you know why Highland</p> <p>14 loaned the money to HCMFA that is the subject</p> <p>15 of the notes described in this paragraph?</p> <p>16 A. I don't remember specifically why</p> <p>17 5.3 million was loaned. I mean, I – it would</p> <p>18 have to be put in the context.</p> <p>19 Q. Do you have any recollection at all</p> <p>20 as to why Highland ever loaned any money to</p> <p>21 HCMFA?</p> <p>22 A. Yes.</p> <p>23 MS. DANDENEAU: Objection to form.</p> <p>24 Q. What do you remember about that?</p> <p>25 A. There was a Highland Global</p>	<p>Page 125</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Allocation Fund, which was a – a fund managed</p> <p>3 by Highland Capital Management Fund Advisors.</p> <p>4 There was a – we – I'm just telling you,</p> <p>5 there was – there was – there was a – a</p> <p>6 ultimately a NAV error found in this fund while</p> <p>7 it was an open-ended fund and, you know, there</p> <p>8 were amounts owed by the advisor in – in</p> <p>9 relation to that NAV error.</p> <p>10 There were also, for the same fund,</p> <p>11 that same fund was ongoing an</p> <p>12 open-end-to-close-end conversion, and as part</p> <p>13 of that proposal, shareholders who voted for</p> <p>14 the conversion received compensation from the</p> <p>15 advisor.</p> <p>16 Q. All right. Now, the events that</p> <p>17 you're describing occurred in the spring of</p> <p>18 2019; right?</p> <p>19 A. These started back – I think, I</p> <p>20 mean –</p> <p>21 Q. I apologize.</p> <p>22 A. – that – I mean, the answer to</p> <p>23 that is no.</p> <p>24 Q. I apologize, the loans that were</p> <p>25 made in connection with the events that you're</p>

<p>Page 126</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 describing occurred in May 2019; right?</p> <p>3 MR. RUKAVINA: Objection to the</p> <p>4 extent that calls for a legal conclusion.</p> <p>5 A. I don't recall specifically what</p> <p>6 amounts of money were moved when, for what</p> <p>7 purpose.</p> <p>8 Q. Okay. Fair enough. Going to the</p> <p>9 next paragraph, do you recall that NexPoint</p> <p>10 Advisors had obtained a number of loans from</p> <p>11 Highland, and they rolled up those loans into</p> <p>12 one note in approximately 2017?</p> <p>13 A. This is for NexPoint Advisors?</p> <p>14 Q. Yes.</p> <p>15 A. I – I mean, I don't – I don't</p> <p>16 recall the NexPoint Advisors loan being a</p> <p>17 roll-up loan, but –</p> <p>18 Q. Do you know why?</p> <p>19 A. But, look, if you have documents</p> <p>20 that show – I mean, look, I just don't recall.</p> <p>21 Q. Okay. That is fair. Do you know</p> <p>22 why – do you have any recollection as to why</p> <p>23 Highland loaned money to NexPoint?</p> <p>24 A. Yes.</p> <p>25 Q. Why did High – why do you recall –</p>	<p>Page 127</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 what is the reason you recall Highland lending</p> <p>3 money to NexPoint?</p> <p>4 A. I mean, I was just – I just – I</p> <p>5 just recall. I mean, I just – I don't</p> <p>6 remember why.</p> <p>7 Q. I understand. And I'm asking you if</p> <p>8 you recall –</p> <p>9 A. Oh, why – I thought you say –</p> <p>10 NexPoint Advisors was launching a fund which</p> <p>11 is – I believe that the legal name is NexPoint</p> <p>12 Capital, Inc. And it – it provided a</p> <p>13 co-invest into that fund.</p> <p>14 And, from what I remember, the –</p> <p>15 the – that NexPoint borrowed money from</p> <p>16 Highland at the time to make that co-invest.</p> <p>17 Q. So this was an investment that</p> <p>18 NexPoint was required to make; is that right?</p> <p>19 MS. DANDENEAU: Objection to form.</p> <p>20 A. I don't know if it was required to</p> <p>21 make, I don't recall that, or if it just made</p> <p>22 it.</p> <p>23 Q. Okay. But your recollection is that</p> <p>24 NexPoint made an investment and they borrowed</p> <p>25 money from Highland to finance the investment.</p>
<p>Page 128</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Do I have that right?</p> <p>3 A. Yes.</p> <p>4 Q. How about HCRE? Do you know why</p> <p>5 HCRE borrowed money from Highland?</p> <p>6 A. I don't remember specifically.</p> <p>7 Q. Do you remember generally?</p> <p>8 A. Generally, yeah – I mean, yes.</p> <p>9 Q. Can you tell me your general</p> <p>10 recollection as to why Highland loaned money to</p> <p>11 HCRE?</p> <p>12 A. For – for – for investment</p> <p>13 purposes.</p> <p>14 Q. So HCRE made the investment and it</p> <p>15 obtained a loan, or loans, from Highland in</p> <p>16 order to finance that investment or those</p> <p>17 investments.</p> <p>18 Do I have that right?</p> <p>19 A. I mean, I – you know, generally.</p> <p>20 Q. Okay. How about Highland Management</p> <p>21 Services, Inc.?</p> <p>22 Do you have any recollection as to</p> <p>23 why HCMS borrowed money from Highland?</p> <p>24 A. Generally.</p> <p>25 Q. What is your general recollection as</p>	<p>Page 129</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 to why HCMS borrowed money from Highland?</p> <p>3 A. For – for investment purposes.</p> <p>4 Q. So it is the same thing, HCMS wanted</p> <p>5 to make investments and it borrowed money from</p> <p>6 Highland in order to finance those investments;</p> <p>7 is that right?</p> <p>8 A. I mean, yes, generally. I mean, I</p> <p>9 can't – I don't – on the services, there –</p> <p>10 there are several loans in these schedules.</p> <p>11 You know, I can't remember why every single one</p> <p>12 of these were made, but I would say, yeah, I</p> <p>13 mean, generally.</p> <p>14 Q. Okay. I appreciate that.</p> <p>15 MR. MORRIS: Let's go to the page</p> <p>16 with Bates No. 251. La Asia, are you</p> <p>17 there?</p> <p>18 MS. CANTY: Sorry, John. It went</p> <p>19 out for a minute. Can you say that again.</p> <p>20 I don't know what is going on.</p> <p>21 MR. MORRIS: The page with Bates</p> <p>22 No. 251, can we go to that.</p> <p>23 MS. CANTY: Yes, sorry.</p> <p>24 MR. MORRIS: Keep going to the</p> <p>25 bottom. Yeah, there you go.</p>

<p>Page 130</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Do you see, Mr. Waterhouse, that</p> <p>3 there is a section there called Subsequent</p> <p>4 Events?</p> <p>5 A. I do.</p> <p>6 Q. And does this relate to the last</p> <p>7 sentence above the signature line on the</p> <p>8 management representation letter that we talked</p> <p>9 about earlier where you made the representation</p> <p>10 that you disclosed subsequent events?</p> <p>11 A. I mean, it relates to it, but not in</p> <p>12 its entirety.</p> <p>13 Q. Okay.</p> <p>14 MR. MORRIS: If we can scroll up to</p> <p>15 capture the entirety of this section right</p> <p>16 here.</p> <p>17 Q. And what do you mean by that, sir?</p> <p>18 MR. MORRIS: Yeah, right there.</p> <p>19 Perfect.</p> <p>20 A. There are -- there are different</p> <p>21 subsequent events in -- under GAAP. So there</p> <p>22 are -- and -- and -- so what we see in the</p> <p>23 notes to the financial statements are one type</p> <p>24 of subevent.</p> <p>25 Q. Okay. And -- and would the type of</p>	<p>Page 131</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 subsequent event relating to affiliate loans be</p> <p>3 captured in this section if they were -- if</p> <p>4 they were made after the end of the fiscal year</p> <p>5 and prior to the issuance of the audit report?</p> <p>6 A. Yes, if they were deemed material or</p> <p>7 disclosable.</p> <p>8 Q. Okay. I appreciate that.</p> <p>9 Do you see the next to the last</p> <p>10 entry there? It says, Over the course of 2019</p> <p>11 through the report date, HCMFA issued</p> <p>12 promissory notes to the partnership in the</p> <p>13 aggregate amount of \$7.4 million?</p> <p>14 A. Yes.</p> <p>15 Q. And does that refresh your</p> <p>16 recollection that those are the notes that</p> <p>17 related to the NAV error that you mentioned</p> <p>18 earlier?</p> <p>19 A. I don't -- I don't remember the</p> <p>20 exact. Again, there are -- I mentioned two</p> <p>21 line items; right?</p> <p>22 Q. Yes.</p> <p>23 A. I mean, it was the GAAP conversion</p> <p>24 process plus the -- the NAV error. I don't</p> <p>25 have the details. I don't recall specifically</p>
<p>Page 132</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 if -- you know, what -- if that 7.4 million was</p> <p>3 solely attributable to the NAV error.</p> <p>4 Q. Okay. But there is no question that</p> <p>5 Highland told PricewaterhouseCoopers that over</p> <p>6 the course of 2019 HCMFA issued promissory</p> <p>7 notes to the partnership in the aggregate</p> <p>8 amount of \$7.4 million; correct?</p> <p>9 A. In the course of the audit, we would</p> <p>10 have produced all promissory notes in our</p> <p>11 possession, including the ones that are</p> <p>12 detailed here.</p> <p>13 Q. Do you recall that you signed the</p> <p>14 two promissory notes that are referenced in</p> <p>15 that provision?</p> <p>16 MS. DANDENEAU: Objection to form.</p> <p>17 A. I didn't recall initially but I've</p> <p>18 been reminded.</p> <p>19 Q. Okay. And -- and do you recall that</p> <p>20 those notes are dated May 2nd and May 3rd,</p> <p>21 2019?</p> <p>22 A. Yes.</p> <p>23 Q. So that was just a month before the</p> <p>24 audit was completed; correct?</p> <p>25 A. Yes. I think we had a June 3rd</p>	<p>Page 133</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 date, right, if -- if my memory serves me</p> <p>3 right.</p> <p>4 Q. Yes, I will represent to you that</p> <p>5 your memory is accurate in that regard.</p> <p>6 Did anybody ever instruct you as the</p> <p>7 CFO to correct this statement that we're</p> <p>8 looking at in subsequent events?</p> <p>9 A. So let me understand. You're saying</p> <p>10 when I was CFO at Highland Capital did anyone</p> <p>11 ever ask me to correct the -- over the course</p> <p>12 of 2019 through the report date HCMFA issued</p> <p>13 promissory notes, this statement?</p> <p>14 Q. Right.</p> <p>15 A. Not that I'm aware.</p> <p>16 Q. While you were the CFO of Highland,</p> <p>17 did anybody ever tell you that that sentence</p> <p>18 was wrong?</p> <p>19 A. Not that I'm aware.</p> <p>20 Q. Highland -- withdrawn.</p> <p>21 HCMFA disclosed these notes in its</p> <p>22 own audited financial statements; right?</p> <p>23 MR. RUKAVINA: Objection, form.</p> <p>24 A. I assume that these would be</p> <p>25 material -- if these are material financial</p>

<p>Page 134</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 statements, yes, they – they – they should be</p> <p>3 and they were likely disclosed.</p> <p>4 Q. Now, there is no statement</p> <p>5 concerning the 2019 notes about the forbearance</p> <p>6 that we looked at in the affiliated note</p> <p>7 section of the report; right?</p> <p>8 MS. DANDENEAU: Objection to form.</p> <p>9 Q. I'll withdraw. That was bad.</p> <p>10 Do you recall when we were looking</p> <p>11 at the paragraph concerning HCMFA earlier it</p> <p>12 had that disclosure about the agreement whereby</p> <p>13 Highland wouldn't ask for demand on the – on</p> <p>14 the HCMFA notes?</p> <p>15 A. Yes.</p> <p>16 Q. That forbearance disclosure is not</p> <p>17 made with respect to the 2019 notes; right?</p> <p>18 A. Not – look, not that I can recall,</p> <p>19 unless – unless it was done at a subsequent</p> <p>20 day.</p> <p>21 Q. Right. And it is not in the</p> <p>22 subsequent event section that we're looking at</p> <p>23 right now where the 2019 notes are described;</p> <p>24 right?</p> <p>25 A. Right. But this is through</p>	<p>Page 135</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 June 3rd. It could have been done on June 4th.</p> <p>3 I don't – I don't – I don't recall.</p> <p>4 Q. Okay.</p> <p>5 MR. MORRIS: Can we put up on the</p> <p>6 screen the HCMFA audit report. And while</p> <p>7 we're –</p> <p>8 MS. DANDENEAU: What exhibit is</p> <p>9 this?</p> <p>10 MR. MORRIS: La Asia, what number is</p> <p>11 that?</p> <p>12 MS. CANTY: 45.</p> <p>13 MR. MORRIS: So this will be marked</p> <p>14 as Exhibit 45.</p> <p>15 (Exhibit 45 marked.)</p> <p>16 MS. CANTY: Yeah, and I will put it</p> <p>17 in the chat.</p> <p>18 MS. DANDENEAU: Thank you.</p> <p>19 Q. Okay. All right. Do you see that</p> <p>20 this is the consolidated financial statements</p> <p>21 for HCMFA for the period ending 12/31/18?</p> <p>22 A. Yes.</p> <p>23 Q. As the treasurer of HCMFA at the</p> <p>24 time, did you have to sign a management</p> <p>25 representation letter similar to the one that</p>
<p>Page 136</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 we looked at earlier for Highland?</p> <p>3 A. I would imagine I would have been</p> <p>4 asked to. I don't recall if I did.</p> <p>5 Q. Do you recall ever being asked by an</p> <p>6 auditor to sign a management representation</p> <p>7 letter and then not doing it?</p> <p>8 A. No.</p> <p>9 MR. MORRIS: Can we just scroll down</p> <p>10 again. I just want to see the date of the</p> <p>11 document.</p> <p>12 A. I mean, let me – you know, there</p> <p>13 are different versions to management</p> <p>14 representation letters I will qualify.</p> <p>15 Yes, there are certain – from time</p> <p>16 to time auditors can make representations</p> <p>17 that – in the rep letter that is being</p> <p>18 proposed that are inaccurate or out of scope or</p> <p>19 things like that and they've asked for</p> <p>20 signature.</p> <p>21 In that context, yes. I mean, you</p> <p>22 know – I mean, if I have been asked to sign</p> <p>23 and make those representations and those</p> <p>24 representations are invalid, yes, I would not,</p> <p>25 I mean, I – I wouldn't sign that.</p>	<p>Page 137</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. PricewaterhouseCoopers served</p> <p>3 as HCMFA's outside auditors as well; correct?</p> <p>4 A. Yes.</p> <p>5 Q. Do you see that this audit report is</p> <p>6 signed on June 3rd, 2019, just like the</p> <p>7 Highland audit report?</p> <p>8 A. That is correct.</p> <p>9 Q. And did the process of – of</p> <p>10 preparing HCMFA's audit report, was that the</p> <p>11 same process that Highland followed when it did</p> <p>12 its audit report at this time?</p> <p>13 A. I mean, it is a different entity.</p> <p>14 There are different assets. You know, it –</p> <p>15 it – it is – as you saw, Highland's</p> <p>16 financials are on a consolidated basis. This</p> <p>17 is different, so it is under the same control</p> <p>18 environment and team.</p> <p>19 Q. Okay. I appreciate that. So the</p> <p>20 same control environment and team participated</p> <p>21 in the preparation of the audit for Highland</p> <p>22 and for HCMFA at around the same time; correct?</p> <p>23 A. Yes.</p> <p>24 MR. MORRIS: Can we go to page 17 of</p> <p>25 the report. I don't have the Bates number.</p>

<p style="text-align: right;">Page 138</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. Do you see that just like</p> <p>3 Highland's audited financial report, HCMFA's</p> <p>4 audited financial report also has a section</p> <p>5 related to subsequent events?</p> <p>6 A. Yes.</p> <p>7 Q. And am I reading this correctly that</p> <p>8 just as Highland had done, HCMFA disclosed in</p> <p>9 its audited financial report a subsequent event</p> <p>10 that related to the issuance of promissory</p> <p>11 notes to Highland in the aggregate amount of</p> <p>12 \$7.4 million in 2019?</p> <p>13 A. That is what I see in the report.</p> <p>14 Q. And you were the treasurer of HCMFA</p> <p>15 at the time; right?</p> <p>16 A. Yes, to the best of my knowledge.</p> <p>17 Q. And did anybody ever tell you prior</p> <p>18 to the time of the issuance of this audit</p> <p>19 report that that sentence relating to HCMFA's</p> <p>20 2019 notes was inaccurate or wrong in any way?</p> <p>21 A. Not that I recall.</p> <p>22 Q. As you sit here right now, has</p> <p>23 anybody ever told you that that sentence is</p> <p>24 inaccurate or wrong in any way?</p> <p>25 A. Not that I recall.</p>	<p style="text-align: right;">Page 139</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. I apologize if I asked you this</p> <p>3 already, but has anybody ever told you at any</p> <p>4 time that you are not authorized to sign the</p> <p>5 promissory notes that are the subject of the</p> <p>6 sentence we're looking at?</p> <p>7 A. Not that I recall.</p> <p>8 Q. Did anybody ever tell you at any</p> <p>9 time that you had made a mistake when you</p> <p>10 signed the promissory notes that are the</p> <p>11 subject of this sentence?</p> <p>12 A. Say that again. Did anyone ever say</p> <p>13 that I made a mistake?</p> <p>14 Q. Let me ask the question again.</p> <p>15 Did anybody ever tell you at any</p> <p>16 time that you made a mistake when you signed</p> <p>17 the two promissory notes in Highland's favor on</p> <p>18 behalf of HCMFA in 2019?</p> <p>19 A. Not that I recall.</p> <p>20 MR. MORRIS: Let's just look at the</p> <p>21 promissory notes quickly. Can we please</p> <p>22 put up Document Number 1, and so this is in</p> <p>23 the pile that y'all have. We'll just go</p> <p>24 for a few more minutes and we can take our</p> <p>25 lunch break.</p>
<p style="text-align: right;">Page 140</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. All right. So I don't know if you</p> <p>3 have seen this before, sir. Do you see that</p> <p>4 this is a complaint against HCMFA?</p> <p>5 A. Yes, I am looking at it on the</p> <p>6 screen.</p> <p>7 Q. Okay. And have you ever seen this</p> <p>8 document before?</p> <p>9 A. I went through some of these</p> <p>10 documents with my counsel here yesterday.</p> <p>11 MR. MORRIS: All right. Can we go</p> <p>12 to Exhibit 1 of this document.</p> <p>13 Q. Do you see Exhibit 1 is a</p> <p>14 \$2.4 million promissory note back in 2019?</p> <p>15 A. Yeah, I found it in the book. Yes,</p> <p>16 I have it here in front of me.</p> <p>17 Q. And this is a demand note, right, if</p> <p>18 you look at Paragraph 2?</p> <p>19 A. Yes.</p> <p>20 Q. And this is a note where the maker</p> <p>21 is HCMFA, and Highland is the payee; right?</p> <p>22 A. Yes.</p> <p>23 MR. MORRIS: And if we can scroll</p> <p>24 down, can we just see Mr. Waterhouse's</p> <p>25 signature.</p>	<p style="text-align: right;">Page 141</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Is that your signature, sir?</p> <p>3 A. Yes, it is.</p> <p>4 Q. And did you sign this document on or</p> <p>5 around May 2nd, 2019?</p> <p>6 A. I don't recall specifically signing</p> <p>7 this, but this is my signature.</p> <p>8 Q. Okay. And do you recall that</p> <p>9 Highland transferred \$2.4 million to HCMFA at</p> <p>10 or around the time you signed this document?</p> <p>11 A. I don't recall specifically. I</p> <p>12 would want to, as I sit here today, go back and</p> <p>13 confirm that, but again, presumably that --</p> <p>14 that -- that did happen.</p> <p>15 Q. You wouldn't have signed this</p> <p>16 document if you didn't believe that HCMFA</p> <p>17 either received or was going to receive</p> <p>18 \$2.4 million from Highland; is that fair?</p> <p>19 A. I mean, it -- if -- if -- if there</p> <p>20 wasn't a transfer of value, yeah, I mean, you</p> <p>21 know, I would have no reason to -- to sign a</p> <p>22 note.</p> <p>23 Q. And -- and Highland wouldn't have</p> <p>24 given this note to PricewaterhouseCoopers if --</p> <p>25 withdrawn.</p>

<p>Page 142</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 HCMFA wouldn't have given this note</p> <p>3 to PricewaterhouseCoopers if it hadn't received</p> <p>4 the principal value of – of the note in the</p> <p>5 form of a loan; correct?</p> <p>6 MR. RUKAVINA: Objection, legal</p> <p>7 conclusion, speculation and form.</p> <p>8 A. Again, we – what we provided to PwC</p> <p>9 were, as part of the audit, any promissory</p> <p>10 notes executed and outstanding. You know, as a</p> <p>11 part of the audit, they, you know, they – they</p> <p>12 have copies of all the bank statements,</p> <p>13 things – things of that sort.</p> <p>14 MR. MORRIS: Okay. Can we go to</p> <p>15 Exhibit 2.</p> <p>16 (Exhibit 2 marked.)</p> <p>17 Q. Do you see that this is a promissory</p> <p>18 note dated May 3rd, 2019 in the amount of</p> <p>19 \$5 million?</p> <p>20 A. Yes.</p> <p>21 Q. Do you believe this is also a demand</p> <p>22 note if you look at Paragraph 2?</p> <p>23 A. Yes.</p> <p>24 Q. And do you see that HCMFA is the</p> <p>25 maker, and Highland is the payee?</p>	<p>Page 143</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes.</p> <p>3 Q. And if we go to the bottom, can we</p> <p>4 just confirm that that is your signature?</p> <p>5 A. Yes.</p> <p>6 Q. And together these notes are the</p> <p>7 notes that are referred to both in Highland and</p> <p>8 HCMFA's audited financial reports in the</p> <p>9 subsequent event sections; correct?</p> <p>10 MS. DANDENEAU: Objection to form.</p> <p>11 A. They – they – they totaled</p> <p>12 \$7.4 million, so presumably, yes.</p> <p>13 Q. Okay. And you were authorized to</p> <p>14 sign these two notes; correct?</p> <p>15 MR. RUKAVINA: Objection, legal</p> <p>16 conclusion.</p> <p>17 A. Yeah. I mean, I'm – I was the</p> <p>18 officer of – of HCMFA. You know, I – I'm not</p> <p>19 the legal expert on – on what that – what</p> <p>20 that confers to me or what it doesn't. I mean,</p> <p>21 that is my signature on the notes.</p> <p>22 Q. And you believed you were authorized</p> <p>23 to sign the notes; is that fair?</p> <p>24 A. I signed a lot of documents in my</p> <p>25 capacity, just because it is operational in</p>
<p>Page 144</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 nature. So, you know, to me this was just</p> <p>3 another document, to be perfectly honest.</p> <p>4 Q. Sir, would you have signed</p> <p>5 promissory notes with the principal amount of</p> <p>6 \$7.4 million if you didn't believe you were</p> <p>7 authorized to do so?</p> <p>8 MS. DANDENEAU: Objection to form.</p> <p>9 Q. Are you frozen?</p> <p>10 A. No. I'm just – you know, it is –</p> <p>11 you know, again, I typically don't sign</p> <p>12 promissory notes, and I don't recall why I</p> <p>13 signed these, but – you know, but I did.</p> <p>14 Q. All right. So listen carefully to</p> <p>15 my question. Would you have ever signed</p> <p>16 promissory notes with a face amount of</p> <p>17 \$7.4 million without believing that you were</p> <p>18 authorized to do so?</p> <p>19 A. No. I mean, I'm – I'm putting my</p> <p>20 signature on there, so no.</p> <p>21 Q. Okay. And would you have signed two</p> <p>22 promissory notes obligating HCMFA to pay</p> <p>23 Highland \$7.4 million without Mr. Dondero's</p> <p>24 prior knowledge and approval?</p> <p>25 MS. DEITSCH-PEREZ: Object to the</p>	<p>Page 145</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 form.</p> <p>3 A. You know, from – from what I recall</p> <p>4 around these notes, you know, I don't recall</p> <p>5 specifically Mr. – Mr. Dondero saying to – to</p> <p>6 make this a loan.</p> <p>7 So my conversation with Mr. Dondero</p> <p>8 around the culmination of the NAV error as</p> <p>9 related to TerreStar which was a – a – I</p> <p>10 think it was a year and a half process. I</p> <p>11 don't know, it was a multi-month process, very</p> <p>12 laborious, very difficult.</p> <p>13 When we got to the end, I had a</p> <p>14 conversation with Mr. Dondero on where to, you</p> <p>15 know, basically get the funds to reimburse the</p> <p>16 fund, and I recall him saying, get the money</p> <p>17 from Highland.</p> <p>18 Q. And so he told you to get the money</p> <p>19 from Highland; is that right?</p> <p>20 A. That is what I recall – in my</p> <p>21 conversation with him, that is – that is what</p> <p>22 I can recall.</p> <p>23 Q. Do you know who drafted these notes?</p> <p>24 A. I don't.</p> <p>25 Q. Did you ask somebody to draft the</p>

<p>Page 146</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 notes?</p> <p>3 A. I didn't ask – I don't specifically</p> <p>4 ask people to draft notes really. I mean,</p> <p>5 again, you know, the legal group at Highland is</p> <p>6 responsible and has always been responsible for</p> <p>7 drafting promissory notes.</p> <p>8 Q. So based on your – based on the</p> <p>9 practice, you believe that somebody from the</p> <p>10 Highland's legal department would have drafted</p> <p>11 these notes. Do I have that right?</p> <p>12 MS. DEITSCH-PEREZ: Object to the</p> <p>13 form. John, I also asked you for the Word</p> <p>14 versions of these notes so we could look at</p> <p>15 the properties, and you have not provided</p> <p>16 them. Are you intending to?</p> <p>17 MR. MORRIS: No.</p> <p>18 Q. Can you answer my question, sir?</p> <p>19 A. Again, I –</p> <p>20 MS. DANDENEAU: Do you want him to</p> <p>21 repeat it?</p> <p>22 A. Yeah, why don't you repeat it?</p> <p>23 Q. Sure. Mr. Waterhouse, based on the</p> <p>24 practice that you have described in your</p> <p>25 understanding, do you believe that these notes</p>	<p>Page 147</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 would have been drafted by somebody in the</p> <p>3 legal department?</p> <p>4 MS. DEITSCH-PEREZ: Object to the</p> <p>5 form.</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And do you know who would</p> <p>8 have instructed – do you have any knowledge as</p> <p>9 to who would have instructed the legal</p> <p>10 department to draft these notes?</p> <p>11 MS. DEITSCH-PEREZ: Object to the</p> <p>12 form.</p> <p>13 A. It was whoever was working – I</p> <p>14 mean, it was likely someone on the team. I</p> <p>15 mean, I don't remember exactly on every note or</p> <p>16 every document, but, again, a lot of these</p> <p>17 things of this nature – they're operational in</p> <p>18 nature – were handled by the team.</p> <p>19 The team knows to – I mean, we</p> <p>20 don't draft documents. We're not lawyers.</p> <p>21 We're not attorneys. It is not what I do or</p> <p>22 accountants do.</p> <p>23 So they are always instructed to go</p> <p>24 and – and go to the legal team to get</p> <p>25 documents like this drafted. Also, when you go</p>
<p>Page 148</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 to the legal team, the – you know, we always</p> <p>3 loop in compliance. And compliance – when you</p> <p>4 go to the legal team, compliance is part of</p> <p>5 legal team. They're made aware of – of – of</p> <p>6 these types of transactions.</p> <p>7 Q. And do you believe that you had</p> <p>8 the – withdrawn.</p> <p>9 Did you ever tell Mr. Dondero –</p> <p>10 (inaudible) – did you see those?</p> <p>11 A. Sorry.</p> <p>12 MS. DEITSCH-PEREZ: I did not hear</p> <p>13 the end of that question.</p> <p>14 Q. Did you ever tell Mr. Dondero that</p> <p>15 you signed these two notes?</p> <p>16 A. I don't recall ever – no, I don't</p> <p>17 recall having a conversation with him.</p> <p>18 Q. Did you ever discuss these two notes</p> <p>19 with him at any time?</p> <p>20 A. The conversation, I recall, was what</p> <p>21 I described earlier. And that is the only time</p> <p>22 I recall ever discussing this.</p> <p>23 Q. Okay. But the corporate accounting</p> <p>24 group had a copy of this – of these two notes.</p> <p>25 And pursuant to the audit process, the</p>	<p>Page 149</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 corporate accounting group gave the two notes</p> <p>3 to PricewaterhouseCoopers in connection with</p> <p>4 the audit; correct?</p> <p>5 MS. DANDENEAU: Objection to form.</p> <p>6 A. Yes. I mean, that is – yeah, I</p> <p>7 mean, they – unless the legal team can also</p> <p>8 retain copies of items like this. I mean, I</p> <p>9 don't know everything that they would retain as</p> <p>10 well.</p> <p>11 The legal team would also, if they</p> <p>12 had documents as part of audits, turn that over</p> <p>13 to the auditors as well. So it could have been</p> <p>14 the corporate accounting team. It could be</p> <p>15 someone on the legal team.</p> <p>16 Q. All right. So you didn't – you</p> <p>17 didn't draft this note; right?</p> <p>18 A. I – I – I did not.</p> <p>19 Q. But somebody at Highland did; is</p> <p>20 that fair?</p> <p>21 MS. DEITSCH-PEREZ: Object to the</p> <p>22 form.</p> <p>23 A. I don't know. I mean, we can go to</p> <p>24 the legal team. I don't – I'm not sitting</p> <p>25 behind someone in legal. Maybe they went to</p>

<p>Page 150</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 outside counsel. I have no idea.</p> <p>3 Q. Did you have any reason to believe</p> <p>4 you weren't authorized to sign this note,</p> <p>5 either of these two notes?</p> <p>6 A. I think I have already answered that</p> <p>7 question.</p> <p>8 Q. Okay. You didn't give these notes</p> <p>9 to PricewaterhouseCoopers; correct?</p> <p>10 MS. DANDENEAU: Objection to form.</p> <p>11 A. I don't recall giving these to</p> <p>12 PricewaterhouseCoopers.</p> <p>13 Q. And in the practice that you have</p> <p>14 described, somebody in the corporate accounting</p> <p>15 group would have given these two notes to</p> <p>16 PricewaterhouseCoopers; correct?</p> <p>17 MS. DANDENEAU: Objection to form.</p> <p>18 A. I think I've answered that. I said</p> <p>19 either the corporate accounting team or maybe</p> <p>20 the legal team.</p> <p>21 MR. MORRIS: Okay. Why don't we</p> <p>22 take our lunch break here.</p> <p>23 VIDEOGRAPHER: We're going off the</p> <p>24 record at 1:04 p.m.</p> <p>25 (Recess taken 1:04 p.m. to 1:49 p.m.)</p>	<p>Page 151</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 VIDEOGRAPHER: We are back on the</p> <p>3 record at 1:49 p.m.</p> <p>4 Q. Mr. Waterhouse, did you speak with</p> <p>5 anybody during the break about the substance of</p> <p>6 this deposition?</p> <p>7 A. I spoke to -- to Deb and Michelle.</p> <p>8 Q. About the substance of the</p> <p>9 deposition?</p> <p>10 A. Yes.</p> <p>11 Q. Can you tell me what you talked</p> <p>12 about?</p> <p>13 MS. DANDENEAU: No. We object on</p> <p>14 the basis of privilege.</p> <p>15 Q. Okay. You are going to follow your</p> <p>16 counsel's objection here?</p> <p>17 A. Yes.</p> <p>18 Q. Okay.</p> <p>19 MR. MORRIS: Can we put up on the</p> <p>20 screen Exhibit 35.</p> <p>21 (Exhibit 35 marked.)</p> <p>22 Q. Are you able to see that document,</p> <p>23 sir?</p> <p>24 A. Yes.</p> <p>25 Q. Have you ever seen an incumbency</p>
<p>Page 152</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 certificate before?</p> <p>3 A. I have.</p> <p>4 Q. Do you have a general understanding</p> <p>5 of what an incumbency certificate is?</p> <p>6 A. I have a general understanding.</p> <p>7 Q. What is your general understanding?</p> <p>8 A. You know, those -- my general</p> <p>9 understanding is that the incumbency</p> <p>10 certificate basically lists folks that can --</p> <p>11 are like authorized signers.</p> <p>12 Q. Okay. And do you see that this is</p> <p>13 an incumbency certificate for Highland Capital</p> <p>14 Management Fund Advisors, L.P.?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And if we could scroll down</p> <p>17 just a little bit, do you see that it's dated</p> <p>18 effective as of April 11th, 2019?</p> <p>19 A. Yes, I see that.</p> <p>20 Q. Okay. And is that your signature in</p> <p>21 the middle of the signature block?</p> <p>22 A. Yes, it is.</p> <p>23 Q. And by signing it, did you accept</p> <p>24 appointment as the treasurer of HCMFA effective</p> <p>25 as of April 11th, 2019?</p>	<p>Page 153</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Again, I'm not the legal -- I don't</p> <p>3 know if this makes me the treasurer or the</p> <p>4 appointment. I don't know -- I don't know</p> <p>5 that, so I don't -- I don't know if that</p> <p>6 document -- again, I think -- again, I'm not</p> <p>7 the legal expert. I think isn't there --</p> <p>8 aren't there other legal documents that detail</p> <p>9 who the officers are that could be incorporated</p> <p>10 or things like that? Again, I don't want to</p> <p>11 play armchair attorney here.</p> <p>12 Q. I'm not asking you for a legal</p> <p>13 conclusion. I'm asking you for your knowledge</p> <p>14 and understanding. When you signed this</p> <p>15 document, did you understand that you were</p> <p>16 accepting an appointment as the treasurer of</p> <p>17 HCMFA?</p> <p>18 MS. DANDENEAU: Objection to form.</p> <p>19 MS. DEITSCH-PEREZ: Objection, form.</p> <p>20 A. Again, I don't think this -- that</p> <p>21 wasn't my understanding. I don't think this</p> <p>22 makes -- this document makes me the treasurer.</p> <p>23 Q. What do you think this document --</p> <p>24 why did you sign this document?</p> <p>25 MS. DEITSCH-PEREZ: Objection to</p>

<p>Page 154</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 form.</p> <p>3 MR. MORRIS: You're objecting to the</p> <p>4 form of the question when I asked him why</p> <p>5 did you sign the document? What is the</p> <p>6 basis for the objection?</p> <p>7 MS. DEITSCH-PEREZ: Because, John, I</p> <p>8 think that it does call for a legal</p> <p>9 conclusion other than – with him saying</p> <p>10 because somebody told me to sign this</p> <p>11 document. But if you want to go there,</p> <p>12 that is fine.</p> <p>13 MR. MORRIS: Okay.</p> <p>14 MS. DANDENEAU: I don't think –</p> <p>15 he's already said he's not a lawyer.</p> <p>16 MR. MORRIS: I'll allow the witness</p> <p>17 to answer this question.</p> <p>18 Q. Why did you sign this document, sir?</p> <p>19 A. I mean, our – our legal group would</p> <p>20 bring by these incumbency certificates from</p> <p>21 time to time. I have no idea why they're being</p> <p>22 updated, and I was asked to sign.</p> <p>23 Q. Did you ask anybody, what is this</p> <p>24 document?</p> <p>25 A. No.</p>	<p>Page 155</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Did anybody tell you why they needed</p> <p>3 you to sign the document?</p> <p>4 A. Not that I can recall.</p> <p>5 Q. You testified earlier that you</p> <p>6 understood that you served as the acting</p> <p>7 treasurer for HCMFA; correct?</p> <p>8 A. Yes.</p> <p>9 Q. How did you become the acting</p> <p>10 treasurer of HCMFA?</p> <p>11 MS. DANDENEAU: Objection to form.</p> <p>12 A. I don't – I don't know the legal –</p> <p>13 I don't know the legal mechanic of how I became</p> <p>14 the acting treasurer.</p> <p>15 Q. I'm not asking for the legal</p> <p>16 mechanic. I'm asking you as the person who</p> <p>17 is –</p> <p>18 MS. DANDENEAU: John, you said –</p> <p>19 MR. MORRIS: Stop.</p> <p>20 MS. DANDENEAU: – how did you</p> <p>21 become the treasurer. That is –</p> <p>22 MR. MORRIS: Please stop.</p> <p>23 MS. DANDENEAU: That is a legal</p> <p>24 question.</p> <p>25 MR. MORRIS: I am not asking any</p>
<p>Page 156</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 legal questions, to be clear. I'm asking</p> <p>3 for this witness' understanding as to how</p> <p>4 he became the acting treasurer of HCMFA.</p> <p>5 If he doesn't know, he can say he doesn't</p> <p>6 know, but this legal stuff is nonsense, and</p> <p>7 I really object to it.</p> <p>8 Q. Sir, I'm asking you a very simple</p> <p>9 question.</p> <p>10 MS. DANDENEAU: Argumentative.</p> <p>11 Q. You testified – you testified that</p> <p>12 you became the acting treasurer of HCM –</p> <p>13 HCMFA; correct?</p> <p>14 A. Yes.</p> <p>15 Q. How did that happen?</p> <p>16 MS. DANDENEAU: Again, object to</p> <p>17 form.</p> <p>18 MR. MORRIS: I can't wait to do this</p> <p>19 in a courtroom. Good God.</p> <p>20 Q. Go ahead, sir.</p> <p>21 A. I don't know the exact process of</p> <p>22 how that happened.</p> <p>23 Q. Do you have any idea whether signing</p> <p>24 this document was part of the process?</p> <p>25 MR. MORRIS: You know what –</p>	<p>Page 157</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MS. DANDENEAU: Objection.</p> <p>3 MR. MORRIS: – withdrawn. You guys</p> <p>4 want to do this, I can't wait. I can't</p> <p>5 wait. This is the craziest stuff ever.</p> <p>6 MS. DANDENEAU: John, he said he's</p> <p>7 not a lawyer, and you are asking him for a</p> <p>8 legal conclusion, and he says he doesn't</p> <p>9 know, and you persist.</p> <p>10 MR. MORRIS: Okay.</p> <p>11 MS. DANDENEAU: So you can ask these</p> <p>12 questions –</p> <p>13 MR. MORRIS: Did anyone – please</p> <p>14 stop talking.</p> <p>15 MS. DANDENEAU: – at another</p> <p>16 point – no, no, no, I'm entitled to talk,</p> <p>17 too; right? If you're going to make these</p> <p>18 accusations as if we're trying to stonewall</p> <p>19 you, this is not the witness to ask that</p> <p>20 question.</p> <p>21 MR. MORRIS: I can't – I can't</p> <p>22 wait – I can't wait to do this in a</p> <p>23 courtroom. I will just leave it at that.</p> <p>24 MS. DANDENEAU: That's right, I'm</p> <p>25 sure you can't.</p>

<p>Page 158</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Did anyone ever tell you, sir, that</p> <p>3 even though you were the acting treasurer of</p> <p>4 HCMFA, that you were not authorized to sign the</p> <p>5 two promissory notes that we looked at before</p> <p>6 lunch?</p> <p>7 A. I'm not sure I understand the</p> <p>8 question. I wasn't – I mean, I'm – I'm the</p> <p>9 current acting treasurer.</p> <p>10 Q. Did anybody ever tell you at any</p> <p>11 time that even though you were the acting</p> <p>12 treasurer of HCMFA, that you were not</p> <p>13 authorized to sign the two promissory notes</p> <p>14 that we looked at before lunch?</p> <p>15 MS. DANDENEAU: Objection to form.</p> <p>16 A. Not that I recall.</p> <p>17 Q. Did anybody ever tell you at any</p> <p>18 time that you were not authorized to sign the</p> <p>19 two promissory notes that we looked at before</p> <p>20 lunch?</p> <p>21 A. Not that I recall.</p> <p>22 Q. Did anybody ever tell you at any</p> <p>23 time that you should not have signed the two</p> <p>24 promissory notes that we looked at before</p> <p>25 lunch?</p>	<p>Page 159</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Not that I recall.</p> <p>3 Q. Did you ever tell anybody at any</p> <p>4 time that you weren't authorized to sign the</p> <p>5 two promissory notes that we looked at before</p> <p>6 lunch?</p> <p>7 A. Not that I recall.</p> <p>8 Q. Did you ever tell anybody at any</p> <p>9 time that you made a mistake when you signed</p> <p>10 the two promissory notes that we looked at</p> <p>11 before lunch?</p> <p>12 A. Not that I recall.</p> <p>13 Q. As you sit here right now, do you</p> <p>14 have any reason to believe that you were not</p> <p>15 authorized to sign the two documents that we</p> <p>16 looked at before lunch?</p> <p>17 MS. DANDENEAU: Objection to form.</p> <p>18 A. If – if this is the – the valid</p> <p>19 incumbency certificate, I mean, this does –</p> <p>20 this does detail who the signers are.</p> <p>21 Q. Okay. And looking at that document,</p> <p>22 does that give you comfort that you were</p> <p>23 authorized to sign the two promissory notes</p> <p>24 that we looked at before lunch?</p> <p>25 MS. DEITSCH-PEREZ: Object to the</p>
<p>Page 160</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 form.</p> <p>3 MS. DANDENEAU: Objection, form.</p> <p>4 A. Yes.</p> <p>5 Q. As of October 20th – withdrawn.</p> <p>6 I'm trying to take your mind back to</p> <p>7 a year ago, October 2020. Do you recall at</p> <p>8 that time that the boards of the retail funds</p> <p>9 were making inquiries about obligations that</p> <p>10 were owed by the advisors to Highland in</p> <p>11 connection with their 15(c) review?</p> <p>12 MS. DANDENEAU: Objection to form.</p> <p>13 A. I don't – I don't recall.</p> <p>14 Q. As of October 2020, you had no</p> <p>15 reason to believe you weren't authorized to</p> <p>16 sign the two promissory notes that we just</p> <p>17 looked at; correct?</p> <p>18 MS. DANDENEAU: Objection, form.</p> <p>19 MS. DEITSCH-PEREZ: Objection to</p> <p>20 form.</p> <p>21 A. I didn't think about it in October</p> <p>22 of 2020, but I mean –</p> <p>23 Q. Did you have any reason to believe</p> <p>24 at that time that you weren't authorized to</p> <p>25 sign the two notes that we just looked at?</p>	<p>Page 161</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Not that I'm aware, no.</p> <p>3 Q. Did you have any reason to believe a</p> <p>4 year ago that you made a mistake when you</p> <p>5 signed those two notes?</p> <p>6 A. Not that I'm aware.</p> <p>7 Q. A year ago you believed that HCMFA</p> <p>8 owed Highland the unpaid principal amounts that</p> <p>9 were due under those two notes; correct?</p> <p>10 A. They're – they're promissory notes</p> <p>11 that were – as you presented, that were –</p> <p>12 that were executed. Whether they're valid or</p> <p>13 if there's other reasons, I didn't – I don't</p> <p>14 know.</p> <p>15 Q. I'm not asking you whether they're</p> <p>16 valid or not. I'm asking you for your state of</p> <p>17 mind. A year ago you believed that HCMFA</p> <p>18 was – was obligated to pay the unpaid</p> <p>19 principal amount under the two notes that you</p> <p>20 signed; correct?</p> <p>21 A. Yeah, I'm – I'm – yes.</p> <p>22 Q. Thank you. Are you aware – you're</p> <p>23 aware that – that in 2017, NexPoint issued a</p> <p>24 note in favor of Highland in the approximate</p> <p>25 amount of \$30 million; correct?</p>

<p>Page 162</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I'm – I'm – I'm generally aware.</p> <p>3 Q. Okay. And are you generally aware</p> <p>4 that from time to time, after the note was</p> <p>5 issued by NexPoint, that moneys were applied to</p> <p>6 principal and interest that were due under the</p> <p>7 NexPoint note?</p> <p>8 A. Yes, I'm generally aware.</p> <p>9 Q. Okay. And did anybody ever tell you</p> <p>10 that the payments that were made against the</p> <p>11 NexPoint notes were made by mistake?</p> <p>12 A. Yes.</p> <p>13 Q. And is it the one payment that we</p> <p>14 talked about earlier today?</p> <p>15 A. We talked about a lot of things</p> <p>16 today. What payment are we talking about?</p> <p>17 Q. Okay. Who told you that any payment</p> <p>18 made against the NexPoint note was made by</p> <p>19 mistake?</p> <p>20 A. D.C. Sauter.</p> <p>21 Q. When did Mr. Sauter tell you that?</p> <p>22 A. I don't – I don't remember</p> <p>23 specifically.</p> <p>24 Q. Do you remember what payments –</p> <p>25 A. Sometime – sometime this year.</p>	<p>Page 163</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Sometime in 2021?</p> <p>3 A. Yes.</p> <p>4 Q. Do you remember what payment he was</p> <p>5 referring to?</p> <p>6 A. It was the – the payment made in</p> <p>7 January of 2021 or – yeah, January of – of</p> <p>8 this – January of 2021.</p> <p>9 Q. Okay. So did anybody ever tell you</p> <p>10 at any time that any payment that was made</p> <p>11 against principal –</p> <p>12 A. And – and – and – hold on, and it</p> <p>13 may have been other – again, it may have been</p> <p>14 that payment or – or there may have been what</p> <p>15 he was explaining, a misapplication of prior</p> <p>16 payments as well.</p> <p>17 Q. Can you – can you give me any</p> <p>18 specificity – withdrawn.</p> <p>19 Withdrawn. Can you tell me</p> <p>20 everything that Mr. Sauter told you about –</p> <p>21 about errors in relation to payments made</p> <p>22 against principal and interest due under the</p> <p>23 NexPoint note?</p> <p>24 MS. DANDENEAU: Can I just –</p> <p>25 MR. RUKAVINA: Hold on. Hold on.</p>
<p>Page 164</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 I'm going to object here, and I'm going to</p> <p>3 instruct the witness not to answer</p> <p>4 depending on the discussion that you had –</p> <p>5 Mr. Waterhouse, I'm the lawyer for</p> <p>6 NexPoint, and as everyone here knows, D.C.</p> <p>7 Sauter is in-house counsel.</p> <p>8 So if you and Mr. Sauter were having</p> <p>9 a factual discussion and him preparing his</p> <p>10 affidavit, et cetera, then go ahead and</p> <p>11 answer that. But if you were having a</p> <p>12 discussion as to our legal strategy in this</p> <p>13 lawsuit, or anything having to do with</p> <p>14 that, then do not answer that.</p> <p>15 And if you need to talk to either</p> <p>16 your counsel or me about that, then we need</p> <p>17 to have that discussion now.</p> <p>18 A. Okay. Yeah, I don't – I don't</p> <p>19 really know how to make that distinction, so</p> <p>20 maybe I need to talk to counsel before I</p> <p>21 answer, or if I can answer.</p> <p>22 Q. Let me just ask you this question:</p> <p>23 Did – did you have any conversation with</p> <p>24 Mr. Sauter about any payment of principal and</p> <p>25 interest prior to the time that you left</p>	<p>Page 165</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Highland's employment, or did it happen after</p> <p>3 you left Highland's employment?</p> <p>4 A. I don't – I don't recall if – I</p> <p>5 don't recall. I mean, it was sometime in 2021.</p> <p>6 I don't remember if it was before or after I</p> <p>7 was let go from Highland.</p> <p>8 Q. Okay. So – so nobody told you</p> <p>9 prior to 2021 that any error or mistake was</p> <p>10 made in the application of payments against</p> <p>11 principal and interest due on the NexPoint</p> <p>12 note. Do I have that right?</p> <p>13 A. Yeah, I don't – I don't recall this</p> <p>14 being in 2020.</p> <p>15 Q. Okay. And it didn't happen in 2019;</p> <p>16 correct?</p> <p>17 A. I don't recall that happened.</p> <p>18 Q. And it didn't happen in 2018;</p> <p>19 correct?</p> <p>20 A. I don't – I don't recall that</p> <p>21 happening.</p> <p>22 Q. And it didn't happen in 2017;</p> <p>23 correct?</p> <p>24 A. I don't recall.</p> <p>25 Q. But – but you believe the</p>

<p>Page 166</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 conversation took place in 2021. You just</p> <p>3 don't remember if it was before or after you</p> <p>4 left Highland's employment. Do I have that</p> <p>5 right?</p> <p>6 A. It was sometime this year. I</p> <p>7 don't – I don't remember.</p> <p>8 Q. Okay. Did you report this</p> <p>9 conversation to Mr. Seery at any point?</p> <p>10 A. I don't believe so.</p> <p>11 Q. Did you report this conversation to</p> <p>12 anybody at DSI at any time?</p> <p>13 A. I don't recall.</p> <p>14 Q. Do you have – you don't have a</p> <p>15 recollection of ever doing that; correct?</p> <p>16 A. Yeah, that's right. I don't recall</p> <p>17 doing that.</p> <p>18 Q. Do you recall telling anybody at</p> <p>19 Pachulski Stang about the conversation you</p> <p>20 recall with Mr. Sauter?</p> <p>21 A. No, I don't – I don't recall.</p> <p>22 Q. Did you tell any of the independent</p> <p>23 board members about your conversation with</p> <p>24 Mr. Sauter?</p> <p>25 A. I don't recall.</p>	<p>Page 167</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Did you tell any of the employees at</p> <p>3 Highland before you left Highland's employment</p> <p>4 about this call that you had with Mr. Sauter?</p> <p>5 MS. DANDENEAU: Objection to form.</p> <p>6 A. No, I don't – no, I don't recall.</p> <p>7 Q. NexPoint – to the best of your</p> <p>8 knowledge, did NexPoint ever file a proof of</p> <p>9 claim against Highland to try to recover moneys</p> <p>10 that were mistakenly paid against the principal</p> <p>11 and interest due under the note?</p> <p>12 A. Okay. Hold on. You are saying did</p> <p>13 NexPoint Advisors file a proof of claim to</p> <p>14 Highland for errors related to payments under</p> <p>15 the NexPoint note to Highland?</p> <p>16 Q. Correct.</p> <p>17 A. I'm – I'm – I'm not – I'm not</p> <p>18 aware.</p> <p>19 Q. Are you aware –</p> <p>20 A. I'm not the legal person here, I</p> <p>21 don't know.</p> <p>22 Q. I'm just asking for your knowledge,</p> <p>23 sir.</p> <p>24 A. Yeah, I don't know. I'm not aware.</p> <p>25 Q. Are you aware of any claim of any</p>
<p>Page 168</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 kind that NexPoint has ever made to try to</p> <p>3 recover the amounts that it contends were – or</p> <p>4 that Mr. Sauter contend were mistakenly applied</p> <p>5 against principal and interest due under the</p> <p>6 NexPoint note?</p> <p>7 A. I'm not aware.</p> <p>8 MS. DANDENEAU: Objection to form.</p> <p>9 Q. Okay. The advisors' agreements with</p> <p>10 the retail funds are subject to annual renewal;</p> <p>11 correct?</p> <p>12 A. Yes.</p> <p>13 Q. And do you participate in the</p> <p>14 renewal process each year?</p> <p>15 A. Yes.</p> <p>16 Q. What role do you play in the renewal</p> <p>17 process?</p> <p>18 A. I'm – I'm asked by the retail board</p> <p>19 to walk-through the advisors financials.</p> <p>20 Q. And do you do that in the context of</p> <p>21 a board meeting?</p> <p>22 A. Yes, it is – yes, it is typically</p> <p>23 done in a board meeting.</p> <p>24 Q. And do you recall the time –</p> <p>25 does – does the renewal process happen around</p>	<p>Page 169</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 the same time each year?</p> <p>3 A. Yes, it is – it is around the same</p> <p>4 time every year.</p> <p>5 Q. And what – what time period of the</p> <p>6 year does the renewal process occur?</p> <p>7 A. Approximately the September</p> <p>8 timeframe.</p> <p>9 Q. During that process, in your</p> <p>10 experience, does the board typically conduct</p> <p>11 its own diligence and ask for information?</p> <p>12 A. Does the board ask for lots of – I</p> <p>13 mean, just – I mean, lots of information as a</p> <p>14 part of that – that – as part of that board</p> <p>15 meeting and that process.</p> <p>16 Q. Okay. And do you recall that the</p> <p>17 process in 2020 spilled into October?</p> <p>18 A. Yes. Yes.</p> <p>19 Q. Okay. And as part of the process in</p> <p>20 2020, the retail board asked – asked what are</p> <p>21 referred to as 15(c) questions; right?</p> <p>22 A. I guess I don't want to be – they</p> <p>23 asked 15(c) – are you saying they asked 15(c)</p> <p>24 questions and this is why it went into October</p> <p>25 or –</p>

<p>Page 170</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. No, I apologize.</p> <p>3 Do you have an understanding of</p> <p>4 what – of what 15(c) refers to in the context</p> <p>5 of the annual renewal process?</p> <p>6 A. Yes, generally.</p> <p>7 Q. All right. What is your general</p> <p>8 understanding of the term "15(c)" in the</p> <p>9 context of the annual renewal process?</p> <p>10 A. I – I think 15(c) is the section</p> <p>11 that – that – you know, that – that the</p> <p>12 board has to evaluate every year, the retail</p> <p>13 board. They have to, you know, go through,</p> <p>14 evaluate, and go through that approval process</p> <p>15 on a yearly basis.</p> <p>16 Q. Okay.</p> <p>17 MR. MORRIS: Can we put up on the</p> <p>18 screen Exhibit 36, please.</p> <p>19 (Exhibit 36 marked.)</p> <p>20 MR. MORRIS: I guess let's just</p> <p>21 start at the bottom so Mr. Waterhouse can</p> <p>22 see what is here.</p> <p>23 Q. You see this begins with an email</p> <p>24 from Blank Rome to a number of people.</p> <p>25 MR. MORRIS: And if we can scroll</p>	<p>Page 171</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 up – keep going just a little bit.</p> <p>3 Q. You will see that there is an email</p> <p>4 from Lauren Thedford to Thomas Surgent and</p> <p>5 others where she reports that she was attaching</p> <p>6 and reproducing below additional 15(c)</p> <p>7 follow-up questions from the board.</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. And do you see Question No. 2 asks</p> <p>11 whether there are any material outstanding</p> <p>12 amounts currently payable or due in the future</p> <p>13 (e.g., notes) to HCMLP by HCMFA or NexPoint</p> <p>14 Advisors or any other affiliate that provides</p> <p>15 services to the funds?</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. And – and did you – do you recall</p> <p>19 that in – in October of 2020 the retail boards</p> <p>20 were asking for that information?</p> <p>21 A. I don't recall it, but there –</p> <p>22 they're obviously asking in this email.</p> <p>23 Q. Okay.</p> <p>24 MR. MORRIS: Can we scroll up a</p> <p>25 little bit, please.</p>
<p>Page 172</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. And then do you see that</p> <p>3 Ms. Thedford includes you on the email string</p> <p>4 on Tuesday, October 6th, at 5:52?</p> <p>5 A. Yes.</p> <p>6 Q. And she asks you and Dave Klos and</p> <p>7 Kristin Hendrix for advice on that particular</p> <p>8 Request No. 2 that I have just read; right?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Can you tell me who</p> <p>11 Ms. Thedford is?</p> <p>12 A. She was an attorney that was in the</p> <p>13 legal group.</p> <p>14 Q. At Highland Capital Management,</p> <p>15 L.P.?</p> <p>16 A. I'm – I'm – I'm – I don't</p> <p>17 remember if she was an employee of Highland or</p> <p>18 any of the advisors.</p> <p>19 Q. Okay. Do you know if she served as</p> <p>20 the corporate secretary for both HCMFA and</p> <p>21 NexPoint?</p> <p>22 A. Yes.</p> <p>23 Q. And – okay.</p> <p>24 Do you know whether Ms. Thedford</p> <p>25 held any positions in relation to the retail</p>	<p>Page 173</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 funds as we defined that term?</p> <p>3 A. Yes.</p> <p>4 Q. What is your understanding of the</p> <p>5 positions that Ms. Thedford held at the retail</p> <p>6 funds?</p> <p>7 A. I – I recall her being an officer.</p> <p>8 I don't recall her title.</p> <p>9 Q. Okay. Is she still an officer at</p> <p>10 any of the retail funds today?</p> <p>11 A. No.</p> <p>12 Q. Do you know when she ceased to be an</p> <p>13 officer of the retail funds?</p> <p>14 A. Approximately.</p> <p>15 Q. And when did she approximately cease</p> <p>16 to be an officer of the retail funds?</p> <p>17 A. It was in – it was in early of</p> <p>18 2021.</p> <p>19 Q. Okay. Do you know when she became</p> <p>20 an officer of the retail funds?</p> <p>21 A. I don't recall.</p> <p>22 Q. To the best of your recollection,</p> <p>23 was she an officer of the retail funds in</p> <p>24 October of 2020?</p> <p>25 A. I believe so.</p>

<p>Page 174</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. Do you know what title she</p> <p>3 held in her capacity as an officer, if any?</p> <p>4 A. I told you I don't remember.</p> <p>5 Q. Okay. So she sends this email to</p> <p>6 you at 5:52 p.m. on October 6th.</p> <p>7 And if we can scroll up to the</p> <p>8 response, you responded a minute later with a</p> <p>9 one-word answer. Yes.</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. And – and yes is – yes was in</p> <p>13 response to the retail board's Question No. 2,</p> <p>14 right, whether there are any material</p> <p>15 outstanding amounts currently payable or due in</p> <p>16 the future?</p> <p>17 A. Yes.</p> <p>18 MR. MORRIS: And can we scroll up to</p> <p>19 see what happened next.</p> <p>20 Q. So Ms. Thedford writes back to you a</p> <p>21 few minutes later and she asks whether you</p> <p>22 could provide the amounts.</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. And then you respond further and you</p>	<p>Page 175</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 refer her to the balance sheet that was</p> <p>3 provided to the board as part of the 15(c)</p> <p>4 materials.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. And – and did the advisors provide</p> <p>8 to the board certain balance sheets in 2020 in</p> <p>9 connection with the 15(c) review?</p> <p>10 A. Yes, they did.</p> <p>11 Q. Okay. And were the amounts that</p> <p>12 were outstanding or that were to be due in the</p> <p>13 future by the advisors to Highland included in</p> <p>14 the liability section of the balance sheet that</p> <p>15 was given to the retail board?</p> <p>16 A. Yes. Notes would be reflected as</p> <p>17 liabilities.</p> <p>18 Q. Okay. And –</p> <p>19 A. If I'm understanding your question</p> <p>20 correctly.</p> <p>21 Q. You are. And – and – and those</p> <p>22 liabilities you – you were – you believed</p> <p>23 were responsive to the retail board's question;</p> <p>24 correct?</p> <p>25 A. Yes.</p>
<p>Page 176</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. And then if we can scroll up,</p> <p>3 you see Ms. Thedford responds to you</p> <p>4 nine minutes later with a draft response.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. And she says that she is taking from</p> <p>8 the 6/30 financials certain information about</p> <p>9 amounts that were due to HCMLP and affiliates</p> <p>10 as of June 30th, 2020.</p> <p>11 Do you see that?</p> <p>12 A. I do.</p> <p>13 Q. Okay. And did you believe, as the</p> <p>14 treasurer of NexPoint and HCMFA and as the CFO</p> <p>15 of Highland, that the information that</p> <p>16 Ms. Thedford obtained from the 6/30 financials</p> <p>17 was accurate and responsive in relation to the</p> <p>18 retail fund board's question?</p> <p>19 A. I just want to make sure I</p> <p>20 understand the question.</p> <p>21 Are you saying that the financial</p> <p>22 information provided to the retail board as</p> <p>23 part of the 15(c) process, which included</p> <p>24 financial statements as of June 30th of 2021,</p> <p>25 did I feel like those were responsive to their</p>	<p>Page 177</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 questions?</p> <p>3 Q. Yes.</p> <p>4 A. Yes.</p> <p>5 Q. Thank you.</p> <p>6 MS. DEITSCH-PEREZ: John, it is not</p> <p>7 in the chat yet. Can you just make sure it</p> <p>8 gets put in there.</p> <p>9 MR. MORRIS: Sure.</p> <p>10 MS. CANTY: I put it in there. I</p> <p>11 think maybe I just sent it directly, so let</p> <p>12 me make sure it says to everyone. But I</p> <p>13 did put it in there. I will try again.</p> <p>14 MR. MORRIS: Thank you, La Asia.</p> <p>15 MS. DANDENEAU: What number is it.</p> <p>16 MR. MORRIS: What, the Bates number?</p> <p>17 MS. DEITSCH-PEREZ: No, the –</p> <p>18 this – yeah, 36 is not in the chat.</p> <p>19 MR. MORRIS: Okay. We'll get it.</p> <p>20 MS. DANDENEAU: I think that</p> <p>21 Ms. Canty just sent it to me originally.</p> <p>22 Sorry.</p> <p>23 MR. MORRIS: Okay. We will get it</p> <p>24 there.</p> <p>25 MS. CANTY: Okay. It is there now</p>

<p>Page 178</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 for everyone.</p> <p>3 MS. DEITSCH-PEREZ: Got it. Thank</p> <p>4 you.</p> <p>5 Q. Do you recall if the proposed</p> <p>6 response that Ms. Thedford crafted was</p> <p>7 delivered to the retail board with the – with</p> <p>8 the yellow dates having been completed?</p> <p>9 A. I don't know.</p> <p>10 MR. MORRIS: Davor, I'm going to ask</p> <p>11 that the advisors and – the advisors of</p> <p>12 both HCMFA and NexPoint produce to me any</p> <p>13 report that was given to the retail board</p> <p>14 concerning the promissory notes at issue,</p> <p>15 including the obligations under the notes.</p> <p>16 Q. Do you know – do you know if</p> <p>17 ultimately NexPoint informed the retail board</p> <p>18 in response to its question that NexPoint owed</p> <p>19 Highland approximately 23 or \$24 million?</p> <p>20 MS. DANDENEAU: Objection to the</p> <p>21 form.</p> <p>22 A. Sorry, are you asking, did NexPoint</p> <p>23 tell the retail board that it owed Highland?</p> <p>24 Q. Let me ask a better question,</p> <p>25 Mr. Waterhouse.</p>	<p>Page 179</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Did – do you know if anybody ever</p> <p>3 answered the retail board's question that was</p> <p>4 Number 2?</p> <p>5 A. I don't – I can't say for sure.</p> <p>6 Q. Okay. Do you recall – I think you</p> <p>7 testified earlier that you walked through the</p> <p>8 advisors' financials with the retail board;</p> <p>9 correct?</p> <p>10 A. Yes.</p> <p>11 Q. And as part of that process, did you</p> <p>12 disclose to the retail board the obligations</p> <p>13 that NexPoint and HCMFA had to Highland under</p> <p>14 promissory notes?</p> <p>15 A. The retail board, as I stated</p> <p>16 earlier, receives financial information,</p> <p>17 balance sheet, income statement information</p> <p>18 from the advisors. That information is</p> <p>19 provided to the retail board in connection with</p> <p>20 the 15(c) process.</p> <p>21 So any notes between the advisors</p> <p>22 and the Highland would be – anything would be</p> <p>23 detailed in those financial statements.</p> <p>24 Q. Do you recall in 2020 ever speaking</p> <p>25 with the retail board about the advisors'</p>
<p>Page 180</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 obligations under the notes to Highland?</p> <p>3 MS. DANDENEAU: Objection to form.</p> <p>4 MS. DEITSCH-PEREZ: Object to the</p> <p>5 form.</p> <p>6 A. I don't recall specifically.</p> <p>7 Q. Do you have any general recollection</p> <p>8 of discussing with the retail board the</p> <p>9 advisors' obligations to Highland under the</p> <p>10 notes that they issued?</p> <p>11 MS. DANDENEAU: Object to the form.</p> <p>12 MS. DEITSCH-PEREZ: Object to the</p> <p>13 form.</p> <p>14 A. I just recall generally just – it</p> <p>15 is just – I present the financial statements,</p> <p>16 and if they have questions, I answer their</p> <p>17 questions and walk them through.</p> <p>18 I don't recall what they asked. I</p> <p>19 don't recall where the discussion went. I</p> <p>20 don't recall anything of that nature.</p> <p>21 Q. Okay. Do you know if anybody on</p> <p>22 behalf of HCMF – HCMFA ever told the retail</p> <p>23 board that HCMFA had no obligations under the</p> <p>24 two 2019 notes that you signed? Withdrawn.</p> <p>25 Do you know whether anybody on</p>	<p>Page 181</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 behalf of HCMFA ever told the retail boards</p> <p>3 that you weren't authorized to sign either of</p> <p>4 the two 2019 notes?</p> <p>5 MS. DANDENEAU: Objection to form.</p> <p>6 A. I'm not aware.</p> <p>7 Q. Are you aware of anybody on behalf</p> <p>8 of HCMFA ever telling the retail boards that</p> <p>9 your execution of the two 2019 notes was a</p> <p>10 mistake?</p> <p>11 MS. DANDENEAU: Objection to form.</p> <p>12 A. I'm not aware.</p> <p>13 Q. Are you aware of anybody on behalf</p> <p>14 of HCMFA ever telling the retail boards that</p> <p>15 HCMFA did not have to pay the amounts reflected</p> <p>16 in the two notes that you signed in 2019?</p> <p>17 A. I'm not aware.</p> <p>18 Q. Do you know whether anybody ever</p> <p>19 told the retail boards – withdrawn.</p> <p>20 Do you know whether anybody ever</p> <p>21 told the retail boards that Highland has</p> <p>22 commenced a lawsuit to recover on the two notes</p> <p>23 that you signed in 2019?</p> <p>24 A. I'm not aware.</p> <p>25 Q. Are you aware of anybody informing</p>

<p>Page 182</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 the retail boards that Highland has sued to</p> <p>3 recover on the NexPoint note?</p> <p>4 A. I'm not aware.</p> <p>5 Q. Do you know whether anybody ever</p> <p>6 told the retail board that Highland had</p> <p>7 declared a default with respect to the two</p> <p>8 HCMFA notes that you signed in 2019?</p> <p>9 A. I'm not aware.</p> <p>10 Q. Are you aware of anybody ever</p> <p>11 informing the retail boards that Highland had</p> <p>12 declared a default under the NexPoint note?</p> <p>13 A. I'm not aware.</p> <p>14 Q. Are you aware of anybody telling the</p> <p>15 retail board that Highland made a demand for</p> <p>16 payment under the 2019 notes that you signed on</p> <p>17 behalf of HCMFA?</p> <p>18 A. I'm not aware.</p> <p>19 Q. Let's – let's see if there is a</p> <p>20 response to Ms. Thedford's email, if we can</p> <p>21 scroll up.</p> <p>22 Do you see you responded to</p> <p>23 Ms. Thedford five minutes after she provided</p> <p>24 the draft response to you?</p> <p>25 A. Yes.</p>	<p>Page 183</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. And do you see that Dustin</p> <p>3 Norris is copied on this email?</p> <p>4 A. Yes, he is.</p> <p>5 Q. Great. Do you know whether</p> <p>6 Mr. Norris held any positions at either of the</p> <p>7 advisors as of October 6, 2020?</p> <p>8 A. I will go back to – I'm not the</p> <p>9 legal expert of what appoints you or how or</p> <p>10 why, but you did see Dustin's name on the</p> <p>11 incumbency certificate that you produced</p> <p>12 earlier.</p> <p>13 Q. Do you know what his title was in</p> <p>14 October of 2020?</p> <p>15 MS. DANDENEAU: Objection to form.</p> <p>16 A. I don't – I don't recall.</p> <p>17 Q. Was he – did he have a title with</p> <p>18 each of the advisors, to the best of your</p> <p>19 recollection?</p> <p>20 A. I don't recall.</p> <p>21 Q. Do you know why he is included on</p> <p>22 this email string?</p> <p>23 A. I didn't add Dustin. It looks like</p> <p>24 Lauren did. I don't know why she added him or</p> <p>25 not. You would have to ask her.</p>
<p>Page 184</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Does Mr. Norris play a role in</p> <p>3 formulating the advisors' responses to the</p> <p>4 questions asked by the retail board in</p> <p>5 connection with the 15(c) annual review?</p> <p>6 MS. DANDENEAU: Objection to form.</p> <p>7 A. He – Dustin Norris is there in the</p> <p>8 board meetings. But – so he has a role, yes.</p> <p>9 Q. Okay. And does Mr. Norris hold any</p> <p>10 positions, to the best of your knowledge, in</p> <p>11 relation to any of the retail funds?</p> <p>12 A. I don't – I don't believe he does.</p> <p>13 Q. How about Mr. Post, do you know</p> <p>14 whether Mr. Post holds any position in either</p> <p>15 of the advisors?</p> <p>16 A. I mean, he – he – yes.</p> <p>17 Q. What is your understanding of the</p> <p>18 positions that Mr. Post holds in relation to</p> <p>19 the advisors?</p> <p>20 MS. DANDENEAU: Objection to form.</p> <p>21 A. He is an employee of NexPoint</p> <p>22 Advisors. He is also the chief compliance</p> <p>23 officer for – for NexPoint.</p> <p>24 Q. Who is the chief compliance officer</p> <p>25 for HCMFA, if you know?</p>	<p>Page 185</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MS. DANDENEAU: Objection to form.</p> <p>3 A. That would be Jason as well.</p> <p>4 Q. Okay. Now, looking at your</p> <p>5 response, you noted initially that nothing was</p> <p>6 owed under shared services. Do I have that</p> <p>7 right in substance?</p> <p>8 A. Yeah. I think I'm being responsive</p> <p>9 to Lauren's question here, whether any of the</p> <p>10 shared service invoices are outstanding.</p> <p>11 Q. Right.</p> <p>12 A. Yes.</p> <p>13 Q. And that is because – and that is</p> <p>14 because the retail the retail board has asked</p> <p>15 for the disclosure of all material obligations</p> <p>16 that were owed to HCMLP either then or in the</p> <p>17 future; isn't that right?</p> <p>18 MS. DANDENEAU: Objection to form.</p> <p>19 Q. We can go back down and look.</p> <p>20 A. Look, I don't know if that's a</p> <p>21 material item, I mean, again, but sure.</p> <p>22 Q. Okay. But there were no shared</p> <p>23 services outstanding; correct?</p> <p>24 MS. DANDENEAU: Objection to form.</p> <p>25 A. That is what this email seems to</p>

<p>Page 186</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 indicate.</p> <p>3 Q. And you wouldn't have written it if</p> <p>4 you didn't believe it to be true at the time;</p> <p>5 correct?</p> <p>6 A. Correct.</p> <p>7 Q. And when you referred to shared</p> <p>8 services outstanding, what you meant there was</p> <p>9 that neither NexPoint nor HCMFA owed Highland</p> <p>10 any money under the shared services agreements</p> <p>11 that they had with Highland as of October 6th,</p> <p>12 2020; right?</p> <p>13 A. I don't know if it is as of October</p> <p>14 6, 2020 or if it was from – like through the</p> <p>15 financials – through the date of the</p> <p>16 financials as of June 30.</p> <p>17 Q. Okay. And then you noted that</p> <p>18 HCMA – the HCMFA note is a demand note; right?</p> <p>19 A. Yes.</p> <p>20 Q. And then you referred Ms. Thedford</p> <p>21 to Kristin Hendrix for the term of the NexPoint</p> <p>22 note. Do I have that right?</p> <p>23 A. Yes.</p> <p>24 Q. And then you refer to that agreement</p> <p>25 that is referenced in the 2018 audited</p>	<p>Page 187</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 financials about Highland's agreement not to</p> <p>3 make demand upon HCMFA until May 2021; correct?</p> <p>4 A. Correct.</p> <p>5 Q. And then – and then the next thing</p> <p>6 you write is that the attorneys think that BK</p> <p>7 doesn't change that, but don't know for sure at</p> <p>8 the end of the day.</p> <p>9 Do you see that sentence?</p> <p>10 A. Yes.</p> <p>11 Q. Which attorneys were you referring</p> <p>12 to?</p> <p>13 A. I don't remember.</p> <p>14 Q. Did you have a conversation with</p> <p>15 attorneys concerning whether the bankruptcy</p> <p>16 would change or alter in any way the agreement</p> <p>17 not to make a demand under the HCMFA note?</p> <p>18 A. Look, yeah, I mean, I don't</p> <p>19 specifically remember, but generally, I mean,</p> <p>20 it is in this email. I don't – I don't – I</p> <p>21 don't – I don't remember who I talked to or,</p> <p>22 you know, was it inside counsel, outside</p> <p>23 counsel, but obviously I talked to somebody.</p> <p>24 Q. Do you have any recollection –</p> <p>25 A. Well, I don't even know if it's –</p>
<p>Page 188</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 actually, it may not even have been me. I say</p> <p>3 the attorneys in, you know, a lot of – like I</p> <p>4 talked about the team.</p> <p>5 It could have been someone on the</p> <p>6 team, like, hey, we need to run this down, and</p> <p>7 maybe they talked to attorneys again and</p> <p>8 relayed that information to me.</p> <p>9 So I really don't know if I spoke or</p> <p>10 someone else did or – or, I mean, and maybe it</p> <p>11 wasn't even from corporate accounting. Maybe</p> <p>12 it was, you know, other – I'm kind of</p> <p>13 summarizing, you know, again, so I don't really</p> <p>14 know – I can't really say for sure. I don't</p> <p>15 remember how I came about of this knowledge.</p> <p>16 Q. I appreciate your efforts,</p> <p>17 Mr. Waterhouse, but I will just tell you that</p> <p>18 if I ask a question and you don't know the</p> <p>19 answer or you don't recall, I'm happy to accept</p> <p>20 that. I don't – I don't want you to</p> <p>21 speculate, so I want to be clear about that.</p> <p>22 So I appreciate it.</p> <p>23 Let me just ask you simply: Do you</p> <p>24 know what attorneys – can you identify any of</p> <p>25 the attorneys who thought that the bankruptcy</p>	<p>Page 189</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 process didn't change the agreement?</p> <p>3 A. I don't recall.</p> <p>4 Q. Okay. Perfect.</p> <p>5 And then let's look at the last</p> <p>6 sentence. It says, quote: The response should</p> <p>7 include, as I covered in the board meeting,</p> <p>8 that both entities have the full faith and</p> <p>9 backing from Jim Dondero, and to my knowledge</p> <p>10 that hasn't changed.</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Prior to October 6th, 2020,</p> <p>14 had you told the retail board that HCMFA and</p> <p>15 NexPoint have the full faith and backing from</p> <p>16 Jim Dondero?</p> <p>17 A. Yes.</p> <p>18 Q. Do you remember in the context in</p> <p>19 which you told the retail board that?</p> <p>20 A. I mean, generally, yes.</p> <p>21 Q. Tell me what you recall.</p> <p>22 A. So we were walking through the</p> <p>23 financials from the advisors; right? So as I</p> <p>24 described to you, you have got HCMFA and NPA.</p> <p>25 And these – the financials, you know, show</p>

<p>Page 190</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 they have liabilities on them that exceed</p> <p>3 assets.</p> <p>4 So the retail board has asked, okay,</p> <p>5 you know, how – you know, if – if these</p> <p>6 liabilities come due or they're payable, you</p> <p>7 know, how does that come about?</p> <p>8 And, you know, the response is,</p> <p>9 well, the advisors have the – the full faith</p> <p>10 and backing from – from Jim Dondero.</p> <p>11 Q. And how did you know that the</p> <p>12 advisors had the full faith and backing from</p> <p>13 Jim Dondero? What was the basis for that</p> <p>14 statement that you made to the retail board?</p> <p>15 A. I talked to Jim about it at some</p> <p>16 point in the past.</p> <p>17 Q. And did you tell Mr. Dondero that</p> <p>18 you were going to inform the retail board that</p> <p>19 the advisors had his full faith and backing</p> <p>20 before you actually told that to the retail</p> <p>21 board?</p> <p>22 A. I don't recall having that</p> <p>23 conversation.</p> <p>24 Q. Do you recall if you ever informed</p> <p>25 Mr. Dondero that you had disclosed or told the</p>	<p>Page 191</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 retail board that the advisors had the full</p> <p>3 faith and backing of Mr. – Mr. Dondero?</p> <p>4 MS. DEITSCH-PEREZ: Object to the</p> <p>5 form.</p> <p>6 A. I don't recall discussing that with</p> <p>7 him at the time.</p> <p>8 Q. When you told this to the board, was</p> <p>9 Mr. Dondero participating in the discussion?</p> <p>10 A. Not that I recall.</p> <p>11 Q. Withdrawn. Was it not – withdrawn.</p> <p>12 Do you recall whether – when you</p> <p>13 covered this issue with the board, was that in</p> <p>14 a – a Zoom call or a Webex call? Was it a</p> <p>15 telephone call? Was it in-person? Like where</p> <p>16 were you physically in relation to the board?</p> <p>17 A. I believe I was at home.</p> <p>18 Q. Okay. Can you identify every person</p> <p>19 that you recall who was present for this</p> <p>20 disclosure other than – other than the board</p> <p>21 members themselves?</p> <p>22 MS. DEITSCH-PEREZ: Object to the</p> <p>23 form.</p> <p>24 A. I don't recall everyone on the call.</p> <p>25 Q. Can you identify anybody who was on</p>
<p>Page 192</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 the call?</p> <p>3 A. Other than the board members?</p> <p>4 Q. Yes.</p> <p>5 A. Lauren Thedford. I mean, there</p> <p>6 are – there are many – my section is just one</p> <p>7 of many sections that are just – you know, as</p> <p>8 you can appreciate, this is a long board</p> <p>9 meeting.</p> <p>10 I can't recall specifically, really</p> <p>11 even generally, or who was on when this was</p> <p>12 discussed. But Lauren was typically on for the</p> <p>13 entire time.</p> <p>14 Q. I apologize if I asked you this, but</p> <p>15 do either of Mr. Norris or Mr. Post hold any</p> <p>16 positions relative to the retail funds?</p> <p>17 A. I think you asked me this already,</p> <p>18 John.</p> <p>19 Q. Okay. I just don't recall. Can you</p> <p>20 just refresh my recollection if I did, in fact,</p> <p>21 ask you the question?</p> <p>22 A. I don't believe – if we can go</p> <p>23 back. I don't believe Mr. Norris has a title</p> <p>24 at the retail funds. Mr. – and Mr. Post is</p> <p>25 the CCO of the advisor, the advisors.</p>	<p>Page 193</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. Do you know if either of them</p> <p>3 have a position with the retail board – with</p> <p>4 the retail funds?</p> <p>5 A. I don't believe Mr. Norris has a</p> <p>6 position with the retail funds.</p> <p>7 Q. All right. What about Mr. Post?</p> <p>8 A. Mr. Post is the CCO of the advisors.</p> <p>9 Q. Okay. Does he hold any position –</p> <p>10 A. I don't believe so.</p> <p>11 Q. – with the retail funds?</p> <p>12 A. I don't believe so.</p> <p>13 Q. Okay.</p> <p>14 A. I don't know if being the CCO for</p> <p>15 the advisor conveys something for the retail</p> <p>16 funds. Again, I am not – that is the legal</p> <p>17 compliance part of it. I don't know.</p> <p>18 Q. Why did you tell the retail board</p> <p>19 that the advisors have the full faith and</p> <p>20 backing from Mr. Dondero?</p> <p>21 MS. DANDENEAU: Objection to form.</p> <p>22 A. It is – it is – it is what has</p> <p>23 been discussed with them prior.</p> <p>24 Q. And were you – were you trying to</p> <p>25 give them comfort that even though the</p>

<p>Page 194</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 liabilities exceeded the assets that the</p> <p>3 advisors would still be able to meet their</p> <p>4 obligations as they become due?</p> <p>5 MS. DANDENEAU: Objection to form.</p> <p>6 MS. DEITSCH-PEREZ: Object form.</p> <p>7 A. I – I can't – I don't remember</p> <p>8 specifically the conversation, but generally –</p> <p>9 you know, generally, yes. And that is why –</p> <p>10 but, you know, again, in this email saying, you</p> <p>11 know, I am sure I qualified it with the retail</p> <p>12 board, you know, as I said I like – you know,</p> <p>13 to my knowledge, that hasn't changed. But,</p> <p>14 again, generally – generally that is what I</p> <p>15 remember.</p> <p>16 Q. Okay. Do you recall if in the</p> <p>17 advisors' response to the retail board's</p> <p>18 question if the response included any statement</p> <p>19 concerning Mr. Dondero and – and the full</p> <p>20 faith and backing that he was giving to the</p> <p>21 advisors?</p> <p>22 MS. DEITSCH-PEREZ: Object to the</p> <p>23 form.</p> <p>24 A. I don't – I don't remember</p> <p>25 specifically what was provided.</p>	<p>Page 195</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay.</p> <p>3 A. And I don't really – I don't really</p> <p>4 remember generally either.</p> <p>5 Q. Okay.</p> <p>6 MR. MORRIS: So – so, again, I'm</p> <p>7 just going to ask Mr. Rukavina if your</p> <p>8 clients can produce as soon as possible the</p> <p>9 15(c) response, the written response that</p> <p>10 the advisors made, if any, to the board's</p> <p>11 Question No. 2.</p> <p>12 I'm not looking for the whole</p> <p>13 response, but I certainly want the response</p> <p>14 to Question No. 2.</p> <p>15 Q. Do you have a general understanding</p> <p>16 as to the amount by which – withdrawn.</p> <p>17 Did – did the assets of –</p> <p>18 withdrawn.</p> <p>19 Did the liabilities of HCMFA exceed</p> <p>20 its assets in 2020?</p> <p>21 MS. DANDENEAU: Objection to form.</p> <p>22 MS. DEITSCH-PEREZ: Objection, form.</p> <p>23 A. I believe I have already answered</p> <p>24 that question earlier, I think. I believe I</p> <p>25 said yes.</p>
<p>Page 196</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. And did the liabilities of</p> <p>3 NexPoint exceed its assets in 2020?</p> <p>4 MS. DEITSCH-PEREZ: Objection to</p> <p>5 form.</p> <p>6 A. I don't believe so.</p> <p>7 Q. Okay. So – so it was only one of</p> <p>8 the two advisors who had liabilities that</p> <p>9 exceeded the value of the assets.</p> <p>10 Do I have that right?</p> <p>11 MS. DEITSCH-PEREZ: Objection to</p> <p>12 form.</p> <p>13 MS. DANDENEAU: Form.</p> <p>14 A. Yes.</p> <p>15 Q. And do you know, ballpark, the</p> <p>16 amount by which the value of HCMFA's</p> <p>17 liabilities exceeded their assets in 2020?</p> <p>18 MS. DANDENEAU: Objection to form.</p> <p>19 A. I don't – I don't recall.</p> <p>20 MR. MORRIS: I had specifically</p> <p>21 requested in discovery the audited</p> <p>22 financial reports for both advisors and</p> <p>23 NexPoint. I think I may have gotten one</p> <p>24 for NexPoint but I'm still waiting for the</p> <p>25 balance. And I'm going to renew my request</p>	<p>Page 197</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 for those documents too.</p> <p>3 Q. Let's go to the next exhibit, which</p> <p>4 is Number 10. So I think it is in your stack,</p> <p>5 Mr. Waterhouse.</p> <p>6 MR. MORRIS: And we can take the one</p> <p>7 down from the screen and put up Number 10</p> <p>8 for everybody.</p> <p>9 (Exhibit 10 marked.)</p> <p>10 Q. And I don't know if you have ever</p> <p>11 seen this before, but I'm really putting it up</p> <p>12 on the screen for purposes of turning to the</p> <p>13 very last page of the document.</p> <p>14 So this is a document that we have</p> <p>15 been – that we premarked as Exhibit 10. And</p> <p>16 we're turning to the last page of the document,</p> <p>17 which is a document that was filed in the</p> <p>18 adversary proceeding 21-3004. And – no, I</p> <p>19 apologize, I think we – right there. Perfect.</p> <p>20 And it is page 31 of 31.</p> <p>21 MR. MORRIS: I think there may have</p> <p>22 been some something erroneously stapled to</p> <p>23 the hard copy that I gave you folks, but</p> <p>24 I'm looking for page 31 of 31 in the</p> <p>25 document that begins with the first page of</p>

<p>Page 198</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Exhibit 10.</p> <p>3 Q. Do you have that, Mr. Waterhouse?</p> <p>4 A. I don't have it yet. I'm looking.</p> <p>5 Q. All right. If you look at the top</p> <p>6 right-hand corner, you will see it says page</p> <p>7 hopefully something of 31?</p> <p>8 A. Yes, I've got it now.</p> <p>9 Q. Okay. You have got 31 of 31. You</p> <p>10 can take a moment to read that, if you would</p> <p>11 like.</p> <p>12 A. (Reviewing document.) Okay.</p> <p>13 Q. Have you ever seen this before?</p> <p>14 A. I don't know if I have seen this</p> <p>15 specific document, but, you know, I've –</p> <p>16 I'm – I'm aware of it.</p> <p>17 Q. And is this the document that you</p> <p>18 had in mind when you sent that email to</p> <p>19 Ms. Thedford that we just looked at where you</p> <p>20 said that Highland had agreed not to make a</p> <p>21 demand upon HCMFA until May 2021?</p> <p>22 A. Honestly, I don't – it wasn't this</p> <p>23 document. I mean, it's something like this,</p> <p>24 yes. I mean, yes.</p> <p>25 Q. Well –</p>	<p>Page 199</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. It is something like this, but I</p> <p>3 don't think it was this specific document.</p> <p>4 Q. Well, but this document does say in</p> <p>5 the last sentence that Highland agreed not to</p> <p>6 seek – not to demand payment from HCMFA prior</p> <p>7 to May 31, 2021; right?</p> <p>8 A. Yes.</p> <p>9 Q. And are you aware of any other</p> <p>10 document that was ever created pursuant to</p> <p>11 which Highland agreed not to demand payment on</p> <p>12 amounts owed by HCMFA before May 31, 2021?</p> <p>13 A. Hold on. Are you asking, am I aware</p> <p>14 of a document that by HCMFA that basically says</p> <p>15 otherwise?</p> <p>16 Q. No. Let me try again.</p> <p>17 Are you aware of any other document</p> <p>18 pursuant to which – pursuant to which Highland</p> <p>19 agreed not to make a demand on HCMFA until May</p> <p>20 31st, 2021?</p> <p>21 A. I'm – I think there was something</p> <p>22 in connection with – with the – with the</p> <p>23 audit that basically says the same thing.</p> <p>24 Q. Okay. And do you think that the</p> <p>25 audit is referring to this particular document?</p>
<p>Page 200</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I don't know.</p> <p>3 Q. All right. This document is dated</p> <p>4 April 15, 2019. Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. And do you remember that the audit</p> <p>7 was completed on June 3rd, 2019?</p> <p>8 A. Yes.</p> <p>9 Q. And do you recall that the audited</p> <p>10 financials – and I'm happy to pull them up if</p> <p>11 you would like, but do you recall that the</p> <p>12 audited financials included a reference to the</p> <p>13 agreement pursuant to which Highland agreed not</p> <p>14 to make a demand until May 31st, 2021?</p> <p>15 A. Yes, I remember.</p> <p>16 Q. And as part of the process, would</p> <p>17 you have expected the corporate accounting team</p> <p>18 to have provided a copy of this document to</p> <p>19 PwC?</p> <p>20 MS. DANDENEAU: Objection to form.</p> <p>21 A. Yes, I would have expected something</p> <p>22 like this, or again, you know, some document</p> <p>23 that basically states – states the deferral</p> <p>24 till May 31 of 2020.</p> <p>25 Q. Okay.</p>	<p>Page 201</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. May 31 of 2021, excuse me.</p> <p>3 Q. And this document states the</p> <p>4 deferral that you just described; correct?</p> <p>5 A. It does.</p> <p>6 Q. And this document states the</p> <p>7 deferral that was described in the audited</p> <p>8 financial statements that we looked at before;</p> <p>9 correct?</p> <p>10 A. It does.</p> <p>11 MR. MORRIS: Okay. Can we scroll</p> <p>12 down just a little bit to see who signed on</p> <p>13 behalf of the acknowledgment there.</p> <p>14 Q. Okay. So Mr. Dondero signed this</p> <p>15 document on behalf of both HCMFA and Highland;</p> <p>16 do you see that?</p> <p>17 A. I do.</p> <p>18 Q. Okay. Did you discuss this document</p> <p>19 or the – withdrawn.</p> <p>20 Did you discuss the concept of the</p> <p>21 deferral with Mr. Dondero in the spring of</p> <p>22 2019?</p> <p>23 A. I think I testified I don't recall.</p> <p>24 Q. Okay. Do you know whose idea it was</p> <p>25 to issue the acknowledgment in this form?</p>

<p>Page 202</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I don't recall.</p> <p>3 MR. MORRIS: Can we scroll back up</p> <p>4 to the document, please.</p> <p>5 Q. Do you see in the beginning it says,</p> <p>6 reference is made to certain outstanding</p> <p>7 amounts loaned from Highland to HCMFA for</p> <p>8 funding ongoing operations.</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. And were you aware as the CFO of</p> <p>12 Highland and as the treasurer of HCMFA that as</p> <p>13 of April 15, 2019, Highland had made certain</p> <p>14 loans to HCMFA to fund HCMFA's ongoing</p> <p>15 operations?</p> <p>16 A. Yes.</p> <p>17 Q. And were you aware that those loans</p> <p>18 were payable on demand and remained outstanding</p> <p>19 as of December 31st, 2018?</p> <p>20 A. Yes.</p> <p>21 Q. And were you aware that those</p> <p>22 amounts were payable on demand, and they</p> <p>23 remained outstanding as of April 15, 2019?</p> <p>24 MS. DEITSCH-PEREZ: Object to the</p> <p>25 form.</p>	<p>Page 203</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Well, this – this document dated</p> <p>3 April 15, 2019 says they have been deferred to</p> <p>4 May 31, 2021.</p> <p>5 Q. Right. But I'm just sticking to the</p> <p>6 first paragraph where they refer to the</p> <p>7 outstanding amounts. And in the end it says</p> <p>8 the – it remained outstanding on December</p> <p>9 31st, 2018, and I think you told me that you</p> <p>10 understood that, and then I'm just trying to</p> <p>11 capture the last piece of it.</p> <p>12 Did you understand that there were</p> <p>13 amounts outstanding from the loan that Highland</p> <p>14 made to HCMFA to fund ongoing operations as of</p> <p>15 April 15th, 2019?</p> <p>16 A. Yes.</p> <p>17 Q. Thank you. Let's look at the next</p> <p>18 sentence. HCMFA expects that it may be unable</p> <p>19 to repay such amounts should they become due</p> <p>20 for the period commencing today and continuing</p> <p>21 through May 31st, 2021.</p> <p>22 Do you see that?</p> <p>23 MS. DANDENEAU: Objection to form.</p> <p>24 A. I do.</p> <p>25 Q. As the CFO – withdrawn.</p>
<p>Page 204</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 As the treasurer of HCMFA, did you</p> <p>3 believe that – do you believe that statement</p> <p>4 was true and accurate at the time it was</p> <p>5 rendered?</p> <p>6 A. I mean, it – it – the answer to</p> <p>7 that is I really didn't have any – I didn't</p> <p>8 have an opinion really.</p> <p>9 Q. Did you do anything to educate</p> <p>10 yourself in April of 2019 on the issue of</p> <p>11 whether HCMFA could repay the amounts that it</p> <p>12 owed to Highland should they become due?</p> <p>13 A. I don't believe so.</p> <p>14 Q. Did you at any time form any</p> <p>15 opinions as to HCMFA's ability to repay all</p> <p>16 amounts due to Highland should they become due?</p> <p>17 A. Not really. I guess I don't...</p> <p>18 Q. Well, you told the retail board that</p> <p>19 HCMFA's liabilities exceeded their assets in</p> <p>20 2020; correct?</p> <p>21 A. Yes.</p> <p>22 Q. Based on the work that you did to</p> <p>23 prepare for the retail board, did you form any</p> <p>24 view as to whether HCMFA would be unable to</p> <p>25 repay the amounts that it owed to Highland</p>	<p>Page 205</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 should they become due?</p> <p>3 MS. DANDENEAU: Objection to form.</p> <p>4 A. I mean, I – when you look at that,</p> <p>5 to answer you, completely, you know, again,</p> <p>6 if – the response I gave the retail board was,</p> <p>7 you know, the – the advice – HCMFA advisors</p> <p>8 have the – have the full faith and backing of</p> <p>9 Jim Dondero. So I didn't form an opinion of</p> <p>10 whether the advisor could pay it or not.</p> <p>11 Q. Did you form any view as to whether</p> <p>12 the advisors could repay the amounts that it</p> <p>13 owed to Highland should they become due without</p> <p>14 the full faith and backing of Mr. Dondero?</p> <p>15 MS. DANDENEAU: Objection to form.</p> <p>16 MS. DEITSCH-PEREZ: Form.</p> <p>17 A. I mean, if you – if you – if you</p> <p>18 take that last statement out, I mean, it would</p> <p>19 be difficult for HCMFA to pay back demand notes</p> <p>20 at that time.</p> <p>21 Q. And it was precisely for that reason</p> <p>22 that you told the retail board that – that the</p> <p>23 retail – that the advisors had the full faith</p> <p>24 and backing of Mr. Dondero; correct?</p> <p>25 MS. DANDENEAU: Objection to form.</p>

<p>Page 206</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I mean, yes, as the mouthpiece, I</p> <p>3 was relaying information.</p> <p>4 Q. Okay. And you relayed that</p> <p>5 information with the knowledge and approval of</p> <p>6 Mr. Dondero; correct?</p> <p>7 MS. DEITSCH-PEREZ: Object to the</p> <p>8 form.</p> <p>9 A. As I stated in the email, I don't</p> <p>10 believe, and I think I testified I don't</p> <p>11 believe I had conversations with Mr. Dondero at</p> <p>12 the time of that board meeting.</p> <p>13 Q. Did you tell the retail board that</p> <p>14 the advisors had the full faith and backing of</p> <p>15 Mr. Dondero without Mr. Dondero's prior</p> <p>16 approval?</p> <p>17 A. Yeah, I – I – yes, I'm – like I</p> <p>18 said, I think I testified earlier, I'm sure I</p> <p>19 qualified it as well.</p> <p>20 Q. What do you mean by that?</p> <p>21 MS. DANDENEAU: Objection to form.</p> <p>22 A. Again – again, like I said in the</p> <p>23 email, it has the full faith and backing of Jim</p> <p>24 Dondero unless that has changed.</p> <p>25 Q. Actually that is not what you said,</p>	<p>Page 207</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 so let's put the email back up.</p> <p>3 A. It is – it is – it is in the</p> <p>4 email.</p> <p>5 Q. Let's put the email back up. You</p> <p>6 didn't say unless it has changed. You said you</p> <p>7 believe it hasn't changed; right?</p> <p>8 A. Okay. And to my knowledge that</p> <p>9 hasn't changed, that is what it says.</p> <p>10 Q. That's right.</p> <p>11 A. But, again, I mean, that is – I</p> <p>12 don't know everything. And I'm not in every</p> <p>13 conversation. I'm not – to presume that I am,</p> <p>14 is – and you have to put myself – as you</p> <p>15 started this out, Mr. Morris, I was at home in</p> <p>16 October of 2020 with COVID – or, you know,</p> <p>17 under these COVID times that we described is</p> <p>18 very difficult.</p> <p>19 We have all been working at home for</p> <p>20 really the first time ever, undergoing</p> <p>21 processes, procedures, control environments</p> <p>22 that have been untested, and there is poor</p> <p>23 communication.</p> <p>24 So I am relaying, as I'm telling you</p> <p>25 now, what is in the email. And unless</p>
<p>Page 208</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 something has changed – to my knowledge, it</p> <p>3 hasn't changed, but it could have changed.</p> <p>4 Q. When you say that the advisors have</p> <p>5 the full faith and backing from Mr. Dondero,</p> <p>6 did you intend to convey that, to the extent</p> <p>7 the advisors were unable to satisfy their</p> <p>8 obligations as they become due, Mr. Dondero</p> <p>9 would do it for them?</p> <p>10 MS. DANDENEAU: Object to the form.</p> <p>11 MS. DEITSCH-PEREZ: Object to the</p> <p>12 form.</p> <p>13 And, John, we have given you a lot</p> <p>14 of leeway here but this does not seem</p> <p>15 relevant to this case. You seem sort of</p> <p>16 taking a complete sort of diversion into</p> <p>17 the allegations and the complaint just</p> <p>18 filed on Friday, and so I would ask you to</p> <p>19 move on because –</p> <p>20 MR. MORRIS: And I will tell you –</p> <p>21 I will tell you that I have never read that</p> <p>22 complaint cover-to-cover. I have nothing</p> <p>23 to do with the prosecution of those claims.</p> <p>24 And this issue that we're talking about</p> <p>25 right now is related solely to the</p>	<p>Page 209</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 promissory notes that your clients refuse</p> <p>3 to pay.</p> <p>4 So I'm going to continue to ask my</p> <p>5 questions, and I would ask the court</p> <p>6 reporter to read back my last question.</p> <p>7 (Record read.)</p> <p>8 MS. DEITSCH-PEREZ: And then I</p> <p>9 believe there were objections to form.</p> <p>10 Q. You can answer the question.</p> <p>11 A. Yes.</p> <p>12 Q. Thank you very much, sir.</p> <p>13 MR. MORRIS: Can we go back to the</p> <p>14 other document, please?</p> <p>15 Q. Mr. Waterhouse, do you know if this</p> <p>16 document was ever shared with the retail board?</p> <p>17 A. I don't recall.</p> <p>18 Q. Did you ever share it with the</p> <p>19 retail board?</p> <p>20 A. I don't recall.</p> <p>21 Q. Did you ever tell the retail board</p> <p>22 about the substance of this document?</p> <p>23 A. I don't recall.</p> <p>24 Q. Did you ever tell the retail board</p> <p>25 that Highland had agreed not to make a demand</p>

<p>Page 210</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 against HCMFA until May 2021?</p> <p>3 A. I don't recall.</p> <p>4 Q. Do you know whether anybody on</p> <p>5 behalf of the advisors ever informed the retail</p> <p>6 board that Highland had agreed on April 15,</p> <p>7 2019, not to make a demand against HCMFA under</p> <p>8 the promissory notes?</p> <p>9 A. I don't recall.</p> <p>10 Q. Did you instruct Ms. Thedford or</p> <p>11 anybody else responding to the retail board's</p> <p>12 15(c) inquiry to disclose this document?</p> <p>13 A. Did I instruct Ms. Thedford or</p> <p>14 anyone else to – to – to produce this, to</p> <p>15 disclose this document? Is that what you – I</p> <p>16 just want to make sure.</p> <p>17 Q. Uh-huh.</p> <p>18 A. Yeah, I don't – I don't recall.</p> <p>19 Q. Did you instruct anybody to inform</p> <p>20 the retail board, in response to their question</p> <p>21 as part of the 15(c) process, to – to tell the</p> <p>22 retail board about Highland's agreement not to</p> <p>23 make a demand until 2021?</p> <p>24 MS. DANDENEAU: Objection to form.</p> <p>25 A. I don't recall.</p>	<p>Page 211</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Did you ever inform PwC that HCMFA's</p> <p>3 liabilities exceeded its assets?</p> <p>4 MS. DANDENEAU: Object to the form.</p> <p>5 A. I don't – I don't think I told</p> <p>6 them. I mean, they – they audited the</p> <p>7 financial statements.</p> <p>8 Q. Did – do you know if anybody on</p> <p>9 behalf of Highland ever informed</p> <p>10 PricewaterhouseCoopers that HCMFA may be unable</p> <p>11 to repay amounts owing to Highland, should they</p> <p>12 become due?</p> <p>13 MS. DANDENEAU: Objection to form.</p> <p>14 A. Yes. Again, I think I testified</p> <p>15 earlier that – that this was communicated to</p> <p>16 the auditors.</p> <p>17 Q. Ideally –</p> <p>18 A. I don't know who exactly did that.</p> <p>19 I don't recall doing it, but, yeah, it was –</p> <p>20 it was communicated. And that is why – I</p> <p>21 mean, there is a disclosure in the financial</p> <p>22 statements; right?</p> <p>23 Q. There is, and that disclosure</p> <p>24 relates to the last sentence of this document;</p> <p>25 correct?</p>
<p>Page 212</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes.</p> <p>3 Q. Do you recall looking in the</p> <p>4 document and seeing anything that was disclosed</p> <p>5 with respect to the sentence above that?</p> <p>6 A. No.</p> <p>7 Q. Do you know whether anybody on</p> <p>8 behalf of Highland ever informed</p> <p>9 PricewaterhouseCoopers that HCMFA expects that</p> <p>10 it may be unable to repay amounts due and owing</p> <p>11 to Highland should they become due?</p> <p>12 MS. DEITSCH-PEREZ: Object to the</p> <p>13 form. I think that is the third time.</p> <p>14 A. I don't recall. Again, as I said,</p> <p>15 we – all of this was given to the auditors.</p> <p>16 Q. Do you know if Highland received</p> <p>17 anything of value in exchange for its agreement</p> <p>18 not to demand payment on amounts owed by HCMFA</p> <p>19 prior to May 31st, 2021?</p> <p>20 MS. DEITSCH-PEREZ: Object to the</p> <p>21 form. That is the second time.</p> <p>22 MS. DANDENEAU: Object to the form.</p> <p>23 A. I have answered this question.</p> <p>24 MR. RUKAVINA: Hold on. Object to</p> <p>25 legal conclusion. Go ahead.</p>	<p>Page 213</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I have answered this question</p> <p>3 before.</p> <p>4 Q. And the answer was no?</p> <p>5 A. I'm not aware.</p> <p>6 Q. Now, this acknowledgment can't</p> <p>7 possibly apply to the two notes that you signed</p> <p>8 on behalf of HCMFA because those notes were</p> <p>9 signed on May 2nd and May 3rd, 2019; is that</p> <p>10 right?</p> <p>11 MS. DANDENEAU: Objection to form.</p> <p>12 A. Unless there is a drafting error.</p> <p>13 Q. Okay. Are you aware of a drafting</p> <p>14 error?</p> <p>15 A. I'm not aware. I didn't – I wasn't</p> <p>16 part of – I didn't sign this note or this</p> <p>17 acknowledgment. I didn't draft it.</p> <p>18 Q. But you do see it is dated April 15,</p> <p>19 2019; right?</p> <p>20 A. Yes.</p> <p>21 Q. And this was a document that was</p> <p>22 actually included by the advisors in a pleading</p> <p>23 they filed with the Court; right?</p> <p>24 MR. RUKAVINA: Well, I don't know</p> <p>25 that so I object to form.</p>

<p>Page 214</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. Let's go to the first page of</p> <p>3 the document and just confirm that.</p> <p>4 MR. AIGEN: Mr. Morris, I just note</p> <p>5 that you already said there was some error</p> <p>6 with the document that is listed as</p> <p>7 exhibit –</p> <p>8 MR. MORRIS: No. No, no, no.</p> <p>9 MS. DEITSCH-PEREZ: Oh, okay.</p> <p>10 MR. MORRIS: What I said is that</p> <p>11 there is a few pages that were mistakenly</p> <p>12 stapled to the end of the document.</p> <p>13 MS. DEITSCH-PEREZ: Okay.</p> <p>14 MR. MORRIS: There is no problem</p> <p>15 with this document.</p> <p>16 MS. DEITSCH-PEREZ: And just so</p> <p>17 we're clear that the document – the pages</p> <p>18 that start with defendant's amended answer</p> <p>19 are not intended to be part of this</p> <p>20 document?</p> <p>21 MR. MORRIS: That's correct.</p> <p>22 MS. DEITSCH-PEREZ: And that the –</p> <p>23 but it is your representation that the rest</p> <p>24 of the document is – is – is correct</p> <p>25 because we don't – we don't have any way</p>	<p>Page 215</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 of verifying that, we're just –</p> <p>3 MR. MORRIS: You do, actually. You</p> <p>4 could just go to Docket No. 21-3004.</p> <p>5 MS. DEITSCH-PEREZ: If you want to</p> <p>6 stop this deposition so we can go and pull</p> <p>7 that document up, we're happy to do it. So</p> <p>8 I am just asking you for your</p> <p>9 representation.</p> <p>10 MR. MORRIS: Sure. I gave that.</p> <p>11 MS. DEITSCH-PEREZ: Okay.</p> <p>12 Q. So do you see that this is a</p> <p>13 document that was actually filed with the Court</p> <p>14 by Highland Capital Management Fund Advisors?</p> <p>15 A. No. I get with the first page in</p> <p>16 the section. Maybe I'm looking at the wrong</p> <p>17 thing. It says, Highland Capital Management.</p> <p>18 Q. Don't worry about it. Don't worry</p> <p>19 about it.</p> <p>20 A. Maybe I went back – okay.</p> <p>21 MR. MORRIS: All right. Can we put</p> <p>22 up on the screen Exhibit 2.</p> <p>23 (Exhibit 2 marked.)</p> <p>24 MR. MORRIS: I think it is</p> <p>25 Exhibit 1.</p>
<p>Page 216</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MS. DANDENEAU: I'm sorry, John, did</p> <p>3 you say Exhibit 2 or Exhibit 1?</p> <p>4 MR. MORRIS: It is Exhibit 2 in the</p> <p>5 binders so it is premarked Exhibit 2. And</p> <p>6 now I'm asking – right there – going to</p> <p>7 Exhibit 1 to the document that was marked</p> <p>8 as Exhibit 2.</p> <p>9 MS. DANDENEAU: Got it. In the</p> <p>10 binder there is no –</p> <p>11 MS. DEITSCH-PEREZ: There is no</p> <p>12 Exhibit 1.</p> <p>13 MR. MORRIS: All right. So look at</p> <p>14 the one on the screen.</p> <p>15 Q. Do you see, Mr. Waterhouse, that</p> <p>16 this is a promissory note dated May 31st, 2017,</p> <p>17 in the approximate amount of \$30.7 million?</p> <p>18 A. Yes.</p> <p>19 Q. And do you see that the maker of the</p> <p>20 note is NexPoint?</p> <p>21 A. Yes.</p> <p>22 Q. And that Highland is the payee; is</p> <p>23 that right?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And do you see in Paragraph 2</p>	<p>Page 217</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 this is an annual installment note?</p> <p>3 A. Can you scroll down.</p> <p>4 Q. Sure.</p> <p>5 MR. MORRIS: Can we scroll down –</p> <p>6 yeah, there you go.</p> <p>7 A. Right there, yeah. Yes.</p> <p>8 MR. MORRIS: And can we scroll down</p> <p>9 to the signature line.</p> <p>10 Q. And do you recognize that as</p> <p>11 Mr. Dondero's signature?</p> <p>12 A. Yes.</p> <p>13 Q. And is this the promissory note that</p> <p>14 we talked about earlier where NexPoint had made</p> <p>15 certain payments in the aggregate amount of</p> <p>16 about 6 to \$7 million against principal and</p> <p>17 interest?</p> <p>18 A. I don't recall discussing the</p> <p>19 aggregate principal amounts of 6 to \$7 million,</p> <p>20 but – so I don't – I don't recall that prior</p> <p>21 discussion with those amounts.</p> <p>22 Q. All right. Let's take a look.</p> <p>23 NexPoint always included this promissory note</p> <p>24 as a liability on its audited financial</p> <p>25 statements; right?</p>

<p>Page 218</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes.</p> <p>3 Q. And NexPoint had its financial</p> <p>4 statements audited; isn't that correct?</p> <p>5 A. Yes.</p> <p>6 Q. And was the process of NexPoint's</p> <p>7 audit similar to the process you described</p> <p>8 earlier for Highland and HCMFA?</p> <p>9 A. Yes, it is similar.</p> <p>10 Q. Okay.</p> <p>11 MR. MORRIS: Can we put up</p> <p>12 NexPoint's audited financials and let</p> <p>13 everybody know what exhibit number it is,</p> <p>14 La Asia?</p> <p>15 MS. CANTY: It is going to be</p> <p>16 Exhibit 46.</p> <p>17 (Exhibit 46 marked.)</p> <p>18 Q. And do you see, sir, that we've put</p> <p>19 up NexPoint Advisors' consolidated financial</p> <p>20 statements and supplemental information for the</p> <p>21 period ending December 31st, 2019?</p> <p>22 A. Yes.</p> <p>23 Q. Did you participate in the process</p> <p>24 whereby these audited financial statements were</p> <p>25 issued?</p>	<p>Page 219</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I didn't participate directly, as</p> <p>3 I've described before, about the -- the team</p> <p>4 performing the audit.</p> <p>5 Q. Do you recall when the audit of</p> <p>6 NexPoint's financial statements for the period</p> <p>7 ending December 31st, 2019 was completed?</p> <p>8 A. Yes.</p> <p>9 Q. And when do you recall it being</p> <p>10 completed?</p> <p>11 A. In January of 2021.</p> <p>12 Q. Do you know why the 2019 audit</p> <p>13 report wasn't completed until January of 2021?</p> <p>14 A. Yes.</p> <p>15 Q. Why was the NexPoint audit report</p> <p>16 for the period ending 12/31/19 not completed</p> <p>17 until January 2021?</p> <p>18 A. Because we had to deal with working</p> <p>19 from home from -- with COVID, and on top of all</p> <p>20 of our daily responsibilities and job duties</p> <p>21 at -- at providing -- at Highland providing</p> <p>22 services to NexPoint, we had to do all of this</p> <p>23 extra work for a bankruptcy that was filed in</p> <p>24 October of 2019.</p> <p>25 MR. MORRIS: Can we go to the</p>
<p>Page 220</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 balance sheet on page 3? Okay. Stop right</p> <p>3 there.</p> <p>4 Q. Do you see under the liabilities</p> <p>5 section, the last item is note payable to</p> <p>6 affiliate?</p> <p>7 A. Yes.</p> <p>8 Q. And is that the note that we just</p> <p>9 looked at?</p> <p>10 MS. DANDENEAU: Objection to form.</p> <p>11 Q. Withdrawn.</p> <p>12 Is that the approximately</p> <p>13 \$30 million note that we just looked at that</p> <p>14 was dated from 2017?</p> <p>15 MS. DANDENEAU: Objection to form.</p> <p>16 A. I believe no.</p> <p>17 Q. Okay. You're not aware of any other</p> <p>18 note that was outstanding from NexPoint to</p> <p>19 Highland as of the end of the year 2019, other</p> <p>20 than that one \$30 million note; right?</p> <p>21 A. I don't recall.</p> <p>22 Q. And as of the end of 2019, the</p> <p>23 principal amount that was due on the note was</p> <p>24 approximately \$23 million; right?</p> <p>25 MS. DEITSCH-PEREZ: Object to the</p>	<p>Page 221</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 form.</p> <p>3 A. Approximately.</p> <p>4 Q. And does that refresh your</p> <p>5 recollection that between the time the note was</p> <p>6 executed and the end of 2019, that NexPoint had</p> <p>7 paid down approximately \$7 million?</p> <p>8 A. Yes. If we are just doing the math,</p> <p>9 yes.</p> <p>10 Q. Okay. Did NexPoint complete its</p> <p>11 audit from 2020?</p> <p>12 A. Sorry, you kind of broke up. Do</p> <p>13 NexPoint complete?</p> <p>14 Q. The audit of its financial</p> <p>15 statements for the period ending December 31st,</p> <p>16 2020?</p> <p>17 A. No.</p> <p>18 Q. No, it's not complete?</p> <p>19 A. No, it is not complete.</p> <p>20 Q. Did HCMFA complete its audit for the</p> <p>21 year ending December 31st, 2020?</p> <p>22 A. No.</p> <p>23 MR. MORRIS: Can we go to page 15,</p> <p>24 please, the paragraph at the bottom.</p> <p>25 Q. Do you see that NexPoint has</p>

<p>Page 222</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 included under notes payable to Highland a</p> <p>3 reference to the amounts that were outstanding</p> <p>4 as of the year-end 2019 under the note that we</p> <p>5 looked at just a moment ago?</p> <p>6 A. Yes. Are you talking about the</p> <p>7 second paragraph?</p> <p>8 Q. I'm actually talking about first</p> <p>9 paragraph. Do you understand that the first</p> <p>10 paragraph is a reference to the 2017 note, and</p> <p>11 the amounts that were -- the principal amount</p> <p>12 that was outstanding as of the end of 2019?</p> <p>13 MS. DANDENEAU: Objection to form.</p> <p>14 John, do you mean the first paragraph of</p> <p>15 that page?</p> <p>16 MR. MORRIS: No, the first paragraph</p> <p>17 under notes payable to Highland.</p> <p>18 A. Yeah, I see the paragraph, and</p> <p>19 again, this is what I answered earlier. I</p> <p>20 believe so, just because I don't -- again, this</p> <p>21 is a number in a balance sheet, and without</p> <p>22 matching it up and seeing the detail with the</p> <p>23 schedule like I kind of talked about for</p> <p>24 Highland's financial statements, it is a little</p> <p>25 bit more difficult to tie everything in</p>	<p>Page 223</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 perfectly together.</p> <p>3 Q. Okay. But you're not aware of any</p> <p>4 note that was outstanding at the end of 2019</p> <p>5 from NexPoint to Highland other than whatever</p> <p>6 principal was still due and owing under the</p> <p>7 \$30 million note issued in 2017; correct?</p> <p>8 A. Well, it -- I don't -- there is</p> <p>9 reference in the second paragraph. I don't --</p> <p>10 I don't -- I don't recall what that is</p> <p>11 referring to, so I don't -- I don't know.</p> <p>12 Q. Well, if you listen carefully to my</p> <p>13 question, right, I'm asking about notes that</p> <p>14 were outstanding at the end of 2019, and if we</p> <p>15 look at the paragraph you just referred to, it</p> <p>16 says that during the year there were new notes</p> <p>17 issued totaling \$1.5 million, but by the end of</p> <p>18 the year, no principal or interest was</p> <p>19 outstanding on the notes.</p> <p>20 Do you see that?</p> <p>21 A. Oh, I do, yes.</p> <p>22 Q. So does that refresh your</p> <p>23 recollection that there were no notes</p> <p>24 outstanding from NexPoint to Highland other</p> <p>25 than the principal remaining under the original</p>
<p>Page 224</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 \$30 million 2017 note that we looked at a</p> <p>3 moment ago?</p> <p>4 A. Well, we're at the bottom of the</p> <p>5 page. Is there anything on page 16?</p> <p>6 Q. That is a fair question, sure. That</p> <p>7 is it.</p> <p>8 A. Okay. So it appears that that is</p> <p>9 the only note that is detailed in the notes in</p> <p>10 the financial statement.</p> <p>11 Q. And you don't have any memory of any</p> <p>12 other note other than the 2017 note, right,</p> <p>13 being outstanding as of the end of the year?</p> <p>14 A. I deal with thousands of</p> <p>15 transactions every year. I don't really have a</p> <p>16 very specific memory for what exactly was</p> <p>17 outstanding.</p> <p>18 MR. MORRIS: Why don't we take a</p> <p>19 break now. We've been going for a little</p> <p>20 while. It's 3:26. Let's come back at</p> <p>21 3:40.</p> <p>22 VIDEOGRAPHER: We're going off the</p> <p>23 record at 3:26 p.m.</p> <p>24 (Recess taken 3:26 p.m. to 3:39 p.m.)</p> <p>25 VIDEOGRAPHER: We are going back on</p>	<p>Page 225</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 the record at 3:39 p.m.</p> <p>3 Q. All right. Mr. Waterhouse, we -- I</p> <p>4 don't think we have a lot more here.</p> <p>5 To the best of your knowledge and</p> <p>6 recollection, were all affiliate loans and all</p> <p>7 loans made to Mr. Dondero recorded on</p> <p>8 Highland's books and records as assets of</p> <p>9 Highland?</p> <p>10 MS. DANDENEAU: Object to the form,</p> <p>11 asked and answered.</p> <p>12 A. To my knowledge, yes.</p> <p>13 Q. Okay. Can you recall any loan to</p> <p>14 any affiliate or Mr. Dondero that was not</p> <p>15 recorded on Highland's books and records as an</p> <p>16 asset?</p> <p>17 A. Like during my time as CFO? I don't</p> <p>18 recall.</p> <p>19 Q. How about after the time that you</p> <p>20 were CFO? Did you recall that there was a loan</p> <p>21 by Highland to an affiliate or to Mr. Dondero</p> <p>22 that hadn't been previously recorded on</p> <p>23 Highland's books as an asset?</p> <p>24 MS. DANDENEAU: Objection to form.</p> <p>25 A. I guess I don't understand the</p>

<p>Page 226</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 question. I left Highland as of – I'm not</p> <p>3 aware of – I left Highland in February –</p> <p>4 probably the last day of February of 2021.</p> <p>5 Q. Okay.</p> <p>6 A. I'm not – I'm not aware of any –</p> <p>7 I'm not aware of anything past that date.</p> <p>8 Q. Okay. While you were the CFO at</p> <p>9 Highland, did Highland prepare in the ordinary</p> <p>10 course of business a document that reported</p> <p>11 operating results on a monthly basis?</p> <p>12 A. Yes.</p> <p>13 Q. And are you generally familiar with</p> <p>14 the monthly operating reports?</p> <p>15 A. Yeah. You are referring to the</p> <p>16 reports that we filed to the Court every month?</p> <p>17 Q. I apologize, I'm not. I'm taking</p> <p>18 you back to the pre-petition period. There was</p> <p>19 a report that I have seen that I'm going to</p> <p>20 show you, but I'm just asking for your</p> <p>21 knowledge.</p> <p>22 MR. MORRIS: Let's put it up on the</p> <p>23 screen, Exhibit 39.</p> <p>24 (Exhibit 39 marked.)</p> <p>25 Q. Do you see this is a document that</p>	<p>Page 227</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 is called operating results?</p> <p>3 A. Yeah, that's the title of it.</p> <p>4 Q. Okay. And was a report of operating</p> <p>5 results prepared by Highland on a monthly basis</p> <p>6 during the time that you served as CFO?</p> <p>7 A. No.</p> <p>8 Q. Are you familiar with a document of</p> <p>9 this type? And we can certainly look at the</p> <p>10 next page or two to refresh your recollection.</p> <p>11 A. I'm just looking at the title. I</p> <p>12 don't really – again, as I discussed before, I</p> <p>13 don't have any records or documents or emails</p> <p>14 or appointments or anything that I was able to</p> <p>15 use prior to – prior to this deposition, so</p> <p>16 I'm doing the best I can.</p> <p>17 Q. Okay. You don't need to apologize.</p> <p>18 I'm just asking you if you are familiar with</p> <p>19 the document called Operating Results that was</p> <p>20 prepared on a monthly basis at Highland?</p> <p>21 MS. DEITSCH-PEREZ: Object to the</p> <p>22 form.</p> <p>23 Q. If you're not, you're not.</p> <p>24 A. I don't believe this was prepared on</p> <p>25 a monthly basis.</p>
<p>Page 228</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. Do you see that this one</p> <p>3 is – is dated February 2018?</p> <p>4 A. Yes.</p> <p>5 Q. Do you have – do you believe –</p> <p>6 have you ever seen a document that was</p> <p>7 purporting to report operating results for</p> <p>8 Highland?</p> <p>9 MS. DANDENEAU: Objection to form.</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And when you say that you</p> <p>12 don't believe it was produced on a monthly</p> <p>13 basis, was it produced on any periodic bases to</p> <p>14 the best of your recollection?</p> <p>15 A. I believe it was – it was prepared</p> <p>16 on an annual basis.</p> <p>17 Q. Okay.</p> <p>18 MR. MORRIS: Can we look at the next</p> <p>19 page.</p> <p>20 Q. Do you see that there is a statement</p> <p>21 here called: Significant items impacting</p> <p>22 HCMLP's balance sheet?</p> <p>23 And it is dated February 2018.</p> <p>24 A. Yes.</p> <p>25 Q. Do you recall that there was a</p>	<p>Page 229</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 report that Highland prepared that identified</p> <p>3 significant items impacting the balance sheet?</p> <p>4 A. A report that was prepared.</p> <p>5 Q. Let me ask a better question: Did</p> <p>6 Highland prepare reports to the best of your</p> <p>7 recollection that identified significant items</p> <p>8 that impacted its balance sheet?</p> <p>9 A. Well, so Highland prepared a – a</p> <p>10 monthly close package. And maybe I'm</p> <p>11 getting – and – and maybe change names at one</p> <p>12 time or maybe I'm just – again, just</p> <p>13 misremembering – but in that, yes, there is a</p> <p>14 page that would detail just changes in – you</p> <p>15 know, just changes month over month on the</p> <p>16 balance sheet.</p> <p>17 Q. Okay. And maybe it is my fault.</p> <p>18 Maybe I didn't know the proper name for it.</p> <p>19 But let's use the phrase "monthly close</p> <p>20 package."</p> <p>21 Did Highland prepare a monthly close</p> <p>22 package in the ordinary course of business</p> <p>23 during the time that you served as CFO?</p> <p>24 MS. DANDENEAU: Objection to form.</p> <p>25 A. Yes.</p>

<p>Page 230</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. And did the monthly close package</p> <p>3 that Highland prepared include information</p> <p>4 concerning significant items that impacted</p> <p>5 Highland's balance sheet?</p> <p>6 A. Yes, it had a page like that is –</p> <p>7 that is on the screen that detailed items</p> <p>8 like – of that nature.</p> <p>9 Q. And do you know who – was there</p> <p>10 anybody at Highland who was responsible for</p> <p>11 overseeing the preparation of the monthly</p> <p>12 reporting package?</p> <p>13 A. That would have been – again, it</p> <p>14 varies over time during my tenure as CFO.</p> <p>15 It – it varied over – over time, but – but</p> <p>16 typically a – a corporate accounting manager.</p> <p>17 Q. And who were the corporate</p> <p>18 accounting managers during your tenure as CFO?</p> <p>19 A. It would have been Dave Klos and</p> <p>20 Kristin Hendrix.</p> <p>21 Q. And did the corporate accounting</p> <p>22 manager deliver to you drafts of the monthly</p> <p>23 close package before it was finalized?</p> <p>24 A. Sometimes.</p> <p>25 Q. Was that the practice even if there</p>	<p>Page 231</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 were exceptions to the practice?</p> <p>3 A. The practice meaning that they</p> <p>4 sometimes lured them to me?</p> <p>5 Q. That that was the expectation even</p> <p>6 if circumstances prevented that from happening</p> <p>7 from time to time.</p> <p>8 MS. DEITSCH-PEREZ: Object to the</p> <p>9 form.</p> <p>10 A. I – I would say it started out that</p> <p>11 way but over the years it – it was not</p> <p>12 enforced.</p> <p>13 Q. Okay. So you were – you reviewed</p> <p>14 and approved monthly – monthly reporting</p> <p>15 packages for a certain period of time and then</p> <p>16 over time you stopped doing that.</p> <p>17 Do I have that right?</p> <p>18 MS. DANDENEAU: Objection to form.</p> <p>19 A. Yes, I mean, if you're talking about</p> <p>20 a formal meeting where we sit down and go</p> <p>21 through and approve it. I would say that was</p> <p>22 standard practice a decade – you know, early</p> <p>23 on. And as time went on that – that – that</p> <p>24 practice wasn't followed.</p> <p>25 Q. Okay.</p>
<p>Page 232</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. And, quite frankly, I don't even</p> <p>3 know if these were – these were sent to me</p> <p>4 even in any capacity.</p> <p>5 Q. What was the purpose of preparing</p> <p>6 the monthly reporting package – withdrawn.</p> <p>7 What was the purpose of preparing</p> <p>8 the monthly close package?</p> <p>9 MS. DEITSCH-PEREZ: Object to the</p> <p>10 form.</p> <p>11 A. The – the original purpose was so</p> <p>12 that it would just – it would be a report that</p> <p>13 was reviewed monthly with senior management.</p> <p>14 Q. Who was included in the idea of</p> <p>15 senior management?</p> <p>16 A. You know, I think originally when</p> <p>17 this was conceived that would have been like</p> <p>18 Jim Dondero and Mark Okada.</p> <p>19 Q. Were monthly reporting – withdrawn.</p> <p>20 Were monthly close packages prepared</p> <p>21 to the best of your knowledge until the time</p> <p>22 you left Highland?</p> <p>23 A. To my knowledge – I don't know,</p> <p>24 actually. I mean, to my knowledge, I believe</p> <p>25 it was being – that was still being done. I</p>	<p>Page 233</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 don't know because, again, I wasn't reviewing</p> <p>3 them. I hadn't reviewed a close package for –</p> <p>4 for a long time. But I believe the standard</p> <p>5 practice that was still being carried out.</p> <p>6 Q. Did you ever have any discussions</p> <p>7 with the debtor's independent board concerning</p> <p>8 any promissory notes that were issued by any of</p> <p>9 the affiliates or Mr. Dondero?</p> <p>10 A. I can't – I can't – I can't recall</p> <p>11 specifically.</p> <p>12 Q. Did you speak with the independent</p> <p>13 board from time to time?</p> <p>14 A. Yes, from – from – from time to</p> <p>15 time I had discussions with the independent</p> <p>16 board members, you know, either – either, you</p> <p>17 know, by themselves or wholly, you know, as –</p> <p>18 as a – as a combined work.</p> <p>19 Q. Okay. Before we talk about</p> <p>20 Mr. Seery, do you recall ever having a</p> <p>21 conversation with Mr. Nelms or Mr. Dubel</p> <p>22 concerning any promissory note that was</p> <p>23 rendered by one of the affiliates or</p> <p>24 Mr. Dondero to Highland?</p> <p>25 A. I don't recall any conversations</p>

<p>1 WATERHOUSE - 10-19-21</p> <p>2 specifically.</p> <p>3 Q. Do you know if the topic was ever</p> <p>4 discussed, even if you don't remember it</p> <p>5 specifically?</p> <p>6 MS. DANDENEAU: Objection to form.</p> <p>7 A. It – it – it may have. I don't</p> <p>8 know. I don't recall.</p> <p>9 Q. Do you recall ever discussing any</p> <p>10 promissory note issued by any of the affiliates</p> <p>11 or Mr. Dondero with James Seery?</p> <p>12 A. I don't – I don't recall</p> <p>13 specifically.</p> <p>14 Q. Do you recall generally ever</p> <p>15 discussing the topic of promissory notes issued</p> <p>16 by any of the affiliates or Mr. Dondero to</p> <p>17 Highland with Mr. Seery?</p> <p>18 A. Nothing – nothing is really jumping</p> <p>19 out at me.</p> <p>20 Q. Do you recall if you ever told</p> <p>21 Mr. Seery that any of the affiliates or</p> <p>22 Mr. Dondero didn't have an obligation to pay</p> <p>23 all amounts due and owing under their notes?</p> <p>24 A. I don't recall having that</p> <p>25 conversation.</p>	<p>Page 234</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Did you ever tell Mr. Seery that you</p> <p>3 had any reason to believe that the amounts</p> <p>4 reflected in the notes issued by the affiliates</p> <p>5 and Mr. Dondero were invalid for any reason?</p> <p>6 A. I don't – I don't recall.</p> <p>7 Q. Did you tell Mr. Dondero – did you</p> <p>8 tell Mr. Seery that you thought the promissory</p> <p>9 notes issued by the advisors and Mr. Dondero</p> <p>10 that were outstanding as of the petition date</p> <p>11 were assets of the estate?</p> <p>12 A. I don't recall having a specific</p> <p>13 conversation about those – you know, those</p> <p>14 notes outstanding as – as of the petition date</p> <p>15 being assets on the estate. I mean, we put</p> <p>16 together – you know, they're in the books and</p> <p>17 records of the financial statements. I don't</p> <p>18 recall having a specific conversation.</p> <p>19 Q. Did you ever prepare any documents</p> <p>20 that were delivered to Mr. Seery that concerned</p> <p>21 the promissory notes issued by any of the</p> <p>22 affiliates or Mr. Dondero?</p> <p>23 MS. DANDENEAU: Objection to form.</p> <p>24 A. Did I produce any that concerned –</p> <p>25 you mean did I just – did I give Mr. Seery</p>
<p>Page 236</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 anything that – that said I have concerns over</p> <p>3 these notes?</p> <p>4 Q. No. Let me try again. Maybe it was</p> <p>5 my question.</p> <p>6 Did you ever give Mr. Seery any</p> <p>7 information concerning any of the notes that</p> <p>8 were issued by any of the affiliates or</p> <p>9 Mr. Dondero?</p> <p>10 MS. DANDENEAU: Objection to form.</p> <p>11 A. I don't recall if I did or not. I</p> <p>12 don't – I don't remember. I mean, you have my</p> <p>13 emails. You may have asked. Again, I don't –</p> <p>14 I don't know.</p> <p>15 MR. MORRIS: Can we put up the</p> <p>16 document that has been premarked as Exhibit</p> <p>17 39?</p> <p>18 MS. DANDENEAU: John, that is this</p> <p>19 document, isn't it?</p> <p>20 MR. MORRIS: Oh, yeah, it might be,</p> <p>21 as a matter of fact. Let's go to Number</p> <p>22 40.</p> <p>23 (Exhibit 40 marked.)</p> <p>24 Q. During the bankruptcy,</p> <p>25 Mr. Waterhouse, did you prepare documents that</p>	<p>Page 237</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 were filed with the bankruptcy court?</p> <p>3 A. I didn't – I didn't prepare them</p> <p>4 personally.</p> <p>5 Q. Did people prepare them under your</p> <p>6 direction?</p> <p>7 A. Yes. There were members of the team</p> <p>8 that prepared them, and they worked in – you</p> <p>9 know, there were members of DSI that were</p> <p>10 involved in the process as well.</p> <p>11 Q. To the best of your knowledge, did</p> <p>12 DSI rely on the employees of Highland for the</p> <p>13 information that they used to prepare the</p> <p>14 bankruptcy filings?</p> <p>15 A. Yes. The books and records were</p> <p>16 with the Highland personnel.</p> <p>17 Q. Okay. And do you see on the screen</p> <p>18 here, there is a document that we have marked</p> <p>19 as Exhibit 40 that is – that is titled Summary</p> <p>20 of Assets and Liabilities?</p> <p>21 A. Uh-huh.</p> <p>22 Q. Okay. And do you recall reviewing</p> <p>23 any summary of assets and liabilities before it</p> <p>24 was filed with the bankruptcy court?</p> <p>25 A. Yes, I recall reviewing this at a</p>

<p>Page 238</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 high level.</p> <p>3 Q. And did you believe that it was</p> <p>4 accurate at the time it was filed?</p> <p>5 A. I didn't have any other reason to</p> <p>6 believe otherwise.</p> <p>7 Q. Okay. Do you see that the total</p> <p>8 value of all properties listed in Part 1 is</p> <p>9 approximately \$410 million?</p> <p>10 MS. DEITSCH-PEREZ: Objection to</p> <p>11 form.</p> <p>12 A. Yes, it is in 1c.</p> <p>13 Q. Yes.</p> <p>14 A. Yes, I see that.</p> <p>15 Q. Okay. If we go to the second page,</p> <p>16 now I think I may just have excerpts here, just</p> <p>17 so everybody is clear, but if we scroll down to</p> <p>18 the second page, you will see that there is</p> <p>19 a – a little further. There you go. You will</p> <p>20 see there is a reference to Item 71, notes</p> <p>21 receivable.</p> <p>22 Do you see that?</p> <p>23 A. I do.</p> <p>24 Q. And that was a reference to the</p> <p>25 notes receivable from the affiliates and</p>	<p>Page 239</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Mr. Dondero, among others; is that right?</p> <p>3 MS. DANDENEAU: Objection to form.</p> <p>4 A. Yes. The affiliate notes and the</p> <p>5 Dondero notes were in this amount, but they</p> <p>6 weren't – again, like you said, and among</p> <p>7 others.</p> <p>8 Q. Okay. We will look at the</p> <p>9 specificity because I'm not playing gaming</p> <p>10 here, but do you know if the \$150 million of</p> <p>11 notes receivable was included within the</p> <p>12 \$410 million of total value of the debtor's</p> <p>13 assets?</p> <p>14 MS. DANDENEAU: Objection to form.</p> <p>15 A. I – I – I believe so.</p> <p>16 Q. Right. And so is it fair to say</p> <p>17 that as of the date this document was prepared,</p> <p>18 the notes receivable were more than one-third</p> <p>19 of the value of the debtor's assets?</p> <p>20 MS. DEITSCH-PEREZ: Object to the</p> <p>21 form.</p> <p>22 MS. DANDENEAU: Object to the form.</p> <p>23 A. Again, if you are just taking the</p> <p>24 math, 150 divided by whatever the \$400 million</p> <p>25 number is above, then yes, you get there.</p>
<p>Page 240</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay.</p> <p>3 A. You know, but as of the time of this</p> <p>4 filing, that is what was put in this filing,</p> <p>5 right, but, you know, I mean, numbers –</p> <p>6 numbers change, facts and circumstances change.</p> <p>7 Q. But as the CFO of Highland, the</p> <p>8 debtor in bankruptcy, did you believe that this</p> <p>9 number accurately reflected the total amount</p> <p>10 due under the notes receivable?</p> <p>11 A. That is what we had in our books and</p> <p>12 records.</p> <p>13 Q. Okay. And did you believe as the</p> <p>14 CFO that the books and records accurately</p> <p>15 reported the then value of the debtor's assets?</p> <p>16 MS. DANDENEAU: Objection to form.</p> <p>17 A. We didn't – as part of this filing,</p> <p>18 there was no fair value measurement or</p> <p>19 anything. These were just accounting entries</p> <p>20 for the promissory notes. There is no analysis</p> <p>21 for impairment or fair market value adjustments</p> <p>22 or anything of that nature. This is purely</p> <p>23 taking numbers and putting them in our form.</p> <p>24 Q. Did you do any impairment analysis</p> <p>25 at any time while you were employed by</p>	<p>Page 241</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Highland?</p> <p>3 A. Yes, we did do impairment analysis</p> <p>4 on – on assets.</p> <p>5 Q. Okay. Did you ever do an impairment</p> <p>6 analysis on any of the promissory notes that</p> <p>7 were given to Highland by any of the affiliates</p> <p>8 or Mr. Dondero?</p> <p>9 A. Not that I recall.</p> <p>10 Q. Under what circumstances do you</p> <p>11 prepare impairment analyses?</p> <p>12 A. As – as – if you're preparing</p> <p>13 financials in accordance with GAAP, generally</p> <p>14 accepted accounting principles, if you're</p> <p>15 preparing full GAAP financials, you should be</p> <p>16 preparing – you should be undergoing on a</p> <p>17 periodic basis any fair market value</p> <p>18 adjustments to assets.</p> <p>19 As I was instructed at the time of</p> <p>20 the petition date, we weren't producing GAAP</p> <p>21 financials. So this wasn't something I was</p> <p>22 worried about nor concerned about.</p> <p>23 Q. Okay. Were NexPoint and HCMFA and</p> <p>24 Highland's audited financial statements</p> <p>25 prepared in accordance with GAAP?</p>

<p>Page 242</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. The audited financials – yes,</p> <p>3 audited financial statements are prepared in</p> <p>4 accordance with GAAP.</p> <p>5 Q. Do you recall whether any of</p> <p>6 Highland or HCMFA or NexPoint ever made a fair</p> <p>7 market value adjustment to any of the notes</p> <p>8 issued by any of the affiliates or Mr. Dondero</p> <p>9 to Highland?</p> <p>10 A. I do not recall that happening, but</p> <p>11 the – it is because under – under GAAP,</p> <p>12 the – the treatment of liabilities is</p> <p>13 different than assets.</p> <p>14 Q. Okay. So then let's just focus on</p> <p>15 Highland's audited financial statements.</p> <p>16 The last audited financial</p> <p>17 statements were for the period ending December</p> <p>18 31st, 2018; correct?</p> <p>19 A. That is my understanding.</p> <p>20 Q. And you had – you had an obligation</p> <p>21 to disclose anything to PricewaterhouseCoopers</p> <p>22 concerning any subsequent events between the</p> <p>23 end of 2018 and June 3rd, 2019; correct?</p> <p>24 MS. DANDENEAU: Objection to form.</p> <p>25 MS. DEITSCH-PEREZ: Form.</p>	<p>Page 243</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Correct.</p> <p>3 Q. Okay. To the best of your</p> <p>4 knowledge, as Highland's CFO, did Highland ever</p> <p>5 make any fair market value adjustments to any</p> <p>6 of the promissory notes that were carried on</p> <p>7 its balance sheet and that were issued by any</p> <p>8 of the affiliates or Mr. Dondero?</p> <p>9 A. I think I answered that question</p> <p>10 earlier. I don't recall doing that for any of</p> <p>11 the – those – those notes. So it would have</p> <p>12 included the audit for the – for the 2018</p> <p>13 period.</p> <p>14 Q. Okay.</p> <p>15 MR. MORRIS: Can we go to the next</p> <p>16 page.</p> <p>17 Q. Do you see this is a note a list of</p> <p>18 notes receivable? Do you see that?</p> <p>19 A. Yes, I do.</p> <p>20 Q. And do you see that this ties into</p> <p>21 the page that we were just looking?</p> <p>22 A. I'm sorry, can we go back to the</p> <p>23 prior page? I mean, it was at 150,331,222. It</p> <p>24 was on the prior page. Next page. Yes, it</p> <p>25 agrees.</p>
<p>Page 244</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. So now let's look at that</p> <p>3 schedule. So this was the face amount of all</p> <p>4 of the promissory notes that Highland held at</p> <p>5 the time this document was filed with the</p> <p>6 bankruptcy court; right?</p> <p>7 A. Yes.</p> <p>8 Q. There is a footnote there that says,</p> <p>9 doubtful or uncollectible accounts are</p> <p>10 evaluated at year-end.</p> <p>11 Do you see that?</p> <p>12 A. I do.</p> <p>13 Q. Okay. And is it fair to say that as</p> <p>14 of the year-end 2018, the year before this,</p> <p>15 that to the extent any of these notes were</p> <p>16 outstanding at that time, they weren't deemed</p> <p>17 to be doubtful or uncollectible?</p> <p>18 A. Yeah. For the 2018 audit, there</p> <p>19 weren't any – there weren't any adjustments to</p> <p>20 fair value.</p> <p>21 Q. Okay. And during the bankruptcy, do</p> <p>22 you recall that Highland subsequently reserved</p> <p>23 for the Hunter Mountain Investment Trust note?</p> <p>24 A. Yes.</p> <p>25 Q. Why did Highland – were you</p>	<p>Page 245</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 involved in the decision to reserve the Hunter</p> <p>3 Mountain Investment Trust note?</p> <p>4 A. I was not.</p> <p>5 Q. Do you know why Highland decided to</p> <p>6 reserve for the Hunter Mountain Investment</p> <p>7 Trust note?</p> <p>8 A. I don't know yet decision was made.</p> <p>9 I believe it was made by someone at DSI.</p> <p>10 Q. Okay. I'm just asking if you know</p> <p>11 why.</p> <p>12 Did you ever ask anyone why they</p> <p>13 reserved for that particular note?</p> <p>14 A. I don't recall.</p> <p>15 Q. Do you know whether the debtor</p> <p>16 reserved for any other note on this list during</p> <p>17 the bankruptcy?</p> <p>18 A. Again, I don't recall. I wasn't</p> <p>19 part of any process of – again, like any fair</p> <p>20 value adjustments or anything to that degree.</p> <p>21 Like I said, a lot of that was done by DSI and</p> <p>22 it was kind of out of our court.</p> <p>23 Q. Okay. Do you know if any note</p> <p>24 receivable on this list was ever deemed by the</p> <p>25 debtor to be doubtful or uncollectible?</p>

<p>Page 246</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I don't – I don't have a</p> <p>3 recollection of every filing, so I don't know.</p> <p>4 Q. Did you ever have a discussion with</p> <p>5 anybody at any time about whether any of the</p> <p>6 notes receivable on this list should be deemed</p> <p>7 to be doubtful or uncollectible?</p> <p>8 A. No. As I previously stated, we were</p> <p>9 told we didn't have to keep GAAP financials.</p> <p>10 We weren't having – you know, there is no</p> <p>11 underlying audits being performed, so I mean,</p> <p>12 it wasn't something I worried about.</p> <p>13 MR. MORRIS: I move to strike.</p> <p>14 Q. Did you ever have a conversation</p> <p>15 with anybody about any of the notes receivable</p> <p>16 and whether they should be deemed to be</p> <p>17 doubtful or uncollectible? Did you have the</p> <p>18 conversation, yes or no?</p> <p>19 MS. DANDENEAU: Objection to form.</p> <p>20 A. I don't recall.</p> <p>21 Q. Do you recall ever telling anybody</p> <p>22 that you believed any of the notes receivable</p> <p>23 on this list should be doubtful – should be</p> <p>24 deemed to be doubtful or uncollectible?</p> <p>25 MS. DANDENEAU: Objection to form.</p>	<p>Page 247</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I don't recall. I mean, it may have</p> <p>3 happened, you know, again, when we initially</p> <p>4 getting DSI up to speed and going through</p> <p>5 financials, it may have happened, but I don't</p> <p>6 recall specifically.</p> <p>7 Q. While you were the CFO of Highland</p> <p>8 during the time that the company was in</p> <p>9 bankruptcy, did you have any reason to believe</p> <p>10 that any of the notes receivable on this list</p> <p>11 other than Hunter Mountain Investment Trust</p> <p>12 should have been characterized as doubtful or</p> <p>13 uncollectible?</p> <p>14 MS. DANDENEAU: Objection to form.</p> <p>15 MS. DEITSCH-PEREZ: Form.</p> <p>16 A. I didn't know. I didn't form an</p> <p>17 opinion. Bankruptcy was new to me. It still</p> <p>18 is new to me, even after going through this.</p> <p>19 So I really didn't know what to expect nor</p> <p>20 really – you know, I didn't know.</p> <p>21 MR. MORRIS: I move to strike.</p> <p>22 Q. During the period of Highland's</p> <p>23 bankruptcy when you were serving as CFO, did</p> <p>24 you have any reason to believe any of the notes</p> <p>25 on this list were doubtful or uncollectible?</p>
<p>Page 248</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MS. DEITSCH-PEREZ: This is like the</p> <p>3 fifth time you've asked it. Object to the</p> <p>4 form.</p> <p>5 MR. MORRIS: I'm moving to strike,</p> <p>6 if you haven't noticed, because he's not</p> <p>7 answering the question.</p> <p>8 MS. DEITSCH-PEREZ: He was answering</p> <p>9 the question, you just didn't like it, like</p> <p>10 the answer.</p> <p>11 MR. MORRIS: Good Lord.</p> <p>12 Q. Go ahead, Mr. Waterhouse.</p> <p>13 A. Again, I don't – we brought up a</p> <p>14 myriad of issues at the start of the bankruptcy</p> <p>15 case. I don't recall if this was one of them,</p> <p>16 but, again, there are a lot of things we</p> <p>17 couldn't change. Even, you know, I was told</p> <p>18 status quo, blah, blah, blah, right, there is a</p> <p>19 stay, you can't – you know, I don't recall</p> <p>20 specifically, but that doesn't mean it didn't</p> <p>21 happen.</p> <p>22 MR. MORRIS: I move to strike.</p> <p>23 Q. During the time that Highland was in</p> <p>24 bankruptcy and you served as CFO, did you have</p> <p>25 any reason to believe that any of the notes</p>	<p>Page 249</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 receivable on this list were doubtful or</p> <p>3 uncollectible?</p> <p>4 MS. DEITSCH-PEREZ: Object to the</p> <p>5 form.</p> <p>6 A. Potentially.</p> <p>7 Q. Did you ever tell anybody that?</p> <p>8 A. As I just stated like five times,</p> <p>9 yes, we – at the beginning after filing and we</p> <p>10 were getting DSI and others up to speed, you</p> <p>11 know, we had a myriad of discussions of a lot</p> <p>12 of things and this was likely one of them. I</p> <p>13 don't – but I don't recall specifically we</p> <p>14 talked –</p> <p>15 Q. I don't want to know – I don't want</p> <p>16 to know what was –</p> <p>17 MS. DEITSCH-PEREZ: Wait, wait.</p> <p>18 Excuse me. Mr. Morris, you did not let him</p> <p>19 finish his answer.</p> <p>20 A. I spoke – we had – we were</p> <p>21 bringing Fred Karesa and Brad Sharp (phonetic)</p> <p>22 up to speed on all of these items, contracts,</p> <p>23 and investments and going through – we had</p> <p>24 hours and hours and hours of discussion. And</p> <p>25 then not only do I have to repeat this not</p>

<p>Page 250</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 once, twice, three, four times with – you</p> <p>3 know, I mean, we – I don't – I don't remember</p> <p>4 the sum culmination of all these discussions.</p> <p>5 They all kind of blend together.</p> <p>6 MR. MORRIS: Okay. I move to strike</p> <p>7 and I will try one more time.</p> <p>8 Q. Did you ever tell anybody at DSI</p> <p>9 that you believed any of the notes receivable</p> <p>10 on this list were doubtful or uncollectible?</p> <p>11 MS. DANDENEAU: Object to form.</p> <p>12 A. Potentially.</p> <p>13 Q. Potentially you told them or</p> <p>14 potentially they were doubtful or</p> <p>15 uncollectible?</p> <p>16 A. Potentially I told them that we</p> <p>17 needed to look at the value of these – of</p> <p>18 these assets.</p> <p>19 Q. Okay. Did you – okay. It is</p> <p>20 potential that you told them and it is</p> <p>21 potentially that you didn't; right?</p> <p>22 MS. DANDENEAU: Objection to form.</p> <p>23 A. I've gone through that. I don't</p> <p>24 recall specifically.</p> <p>25 Q. So you should just – I don't want</p>	<p>Page 251</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 to tell what you to do. Do you have –</p> <p>3 MS. DANDENEAU: Good.</p> <p>4 Q. Other than – other than telling</p> <p>5 them that they should look at the values, do</p> <p>6 you have any recollection whatsoever of ever</p> <p>7 having told anybody at DSI that any of the</p> <p>8 notes receivable on this page were doubtful or</p> <p>9 uncollectible?</p> <p>10 MS. DEITSCH-PEREZ: Object to the</p> <p>11 form.</p> <p>12 MS. DANDENEAU: Objection.</p> <p>13 A. I recall having general discussions</p> <p>14 about everything on our balance sheet which</p> <p>15 would have included these – these notes</p> <p>16 receivable.</p> <p>17 Q. Okay.</p> <p>18 A. I don't recall specifically where</p> <p>19 those discussions delved into.</p> <p>20 Q. Do you recall any discussion at all</p> <p>21 on the topic of whether any of these notes on</p> <p>22 this list were doubtful or uncollectible?</p> <p>23 MR. AIGEN: Mr. Morris, how on earth</p> <p>24 is that question different from the</p> <p>25 question that you just asked for the last</p>
<p>Page 252</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 five times? I mean, really I thought you</p> <p>3 were – (overspeak.)</p> <p>4 MR. MORRIS: Because he never</p> <p>5 answered it.</p> <p>6 MS. DEITSCH-PEREZ: Are you</p> <p>7 listening to him?</p> <p>8 MR. MORRIS: You know –</p> <p>9 MS. DEITSCH-PEREZ: He basically</p> <p>10 said that he had a conversation with DSI</p> <p>11 that went over all of this stuff and that</p> <p>12 conversation could have included the notes</p> <p>13 but he doesn't recall specifically.</p> <p>14 What more do you want him – to ask</p> <p>15 of him?</p> <p>16 MR. MORRIS: I want him – I would</p> <p>17 love him to say – I would like him to</p> <p>18 testify to the truth, and that is he has no</p> <p>19 recollection.</p> <p>20 MS. DEITSCH-PEREZ: Well, the truth</p> <p>21 as you would like to see it, but – but he</p> <p>22 is testifying truthfully. And I – and, by</p> <p>23 the way, I move to strike that comment –</p> <p>24 MR. MORRIS: Okay.</p> <p>25 MS. DEITSCH-PEREZ: – because it</p>	<p>Page 253</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 suggests that he has not testified</p> <p>3 truthfully.</p> <p>4 MR. MORRIS: I will ask my question</p> <p>5 again. And if at any time you want to</p> <p>6 direct him not to answer, that is your</p> <p>7 prerogative.</p> <p>8 Q. Mr. Waterhouse, do you have any</p> <p>9 recollection at all of ever telling anybody</p> <p>10 from DSI that any of these notes were doubtful</p> <p>11 or uncollectible?</p> <p>12 MS. DANDENEAU: Object to form.</p> <p>13 A. I don't remember specifically.</p> <p>14 Q. Do you remember generally that</p> <p>15 specific topic?</p> <p>16 A. We generally talked about assets,</p> <p>17 values. If – we had discussions of that and</p> <p>18 collectability in nature. I mean, of Highland,</p> <p>19 the funds, the CLOs, the entire complex. We</p> <p>20 had discussions like that, which is, you know,</p> <p>21 as you look at a billion dollar consolidated</p> <p>22 balance sheet.</p> <p>23 So I generally remember – this is</p> <p>24 billions of dollars, including these assets –</p> <p>25 having discussions of this – of this type.</p>

<p>Page 254</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Do you believe that an affiliate</p> <p>3 loan on this list was doubtful or</p> <p>4 uncollectible? Would you have told that to</p> <p>5 DSI?</p> <p>6 MS. DANDENEAU: Objection to form.</p> <p>7 MS. DEITSCH-PEREZ: Objection to form.</p> <p>8 A. If we had, like – again, if we –</p> <p>9 if – if we weren't preparing financial</p> <p>10 statements in accordance with GAAP, and – you</p> <p>11 know, if DSI at that point – they were –</p> <p>12 again, I was new to bankruptcy.</p> <p>13 The CRO is – we are delegating</p> <p>14 everything to the CRO. All the decisionmaking.</p> <p>15 Remember – remember when you and I went into</p> <p>16 Delaware Court and we were saying DSI basically</p> <p>17 does everything, remember this, Mr. Morris?</p> <p>18 You were my counsel at the time, and</p> <p>19 basically we're running everything through DSI.</p> <p>20 That was what this was like in the early part.</p> <p>21 Everything was communicated through</p> <p>22 DSI. So DSI says this. DSI says that. That</p> <p>23 is what we're doing, and we're pointing out</p> <p>24 things to them.</p> <p>25 Now, they decide what direction this</p>	<p>Page 255</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 goes.</p> <p>3 Q. Did you point out that any of</p> <p>4 these –</p> <p>5 A. I don't recall specifically.</p> <p>6 Q. Okay. At any time that you served</p> <p>7 as Highland's CFO, did you ever point out to</p> <p>8 DSI that any of these loans were doubtful or</p> <p>9 uncollectible?</p> <p>10 MS. DEITSCH-PEREZ: Objection to the</p> <p>11 form.</p> <p>12 MS. DANDENEAU: Objection.</p> <p>13 A. If you're asking me if I had a</p> <p>14 conversation with DSI, if any of these loans</p> <p>15 were doubtful or uncollectible, I don't recall</p> <p>16 specifically.</p> <p>17 Q. Do you recall that the debtor filed</p> <p>18 on the docket monthly operating reports?</p> <p>19 A. Yes.</p> <p>20 Q. You prepared those personally,</p> <p>21 didn't you?</p> <p>22 MS. DEITSCH-PEREZ: Objection to</p> <p>23 form.</p> <p>24 A. I didn't personally prepare them,</p> <p>25 the team did with DSI.</p>
<p>Page 256</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. But you signed them; correct?</p> <p>3 A. My signature is on the MORs.</p> <p>4 Q. And you signed them as the preparer</p> <p>5 of the document; correct?</p> <p>6 A. Yes, I did this pursuant to DSI's</p> <p>7 instructions.</p> <p>8 Q. Okay. You wouldn't have signed the</p> <p>9 document if you didn't believe it to be</p> <p>10 accurate; correct?</p> <p>11 A. If I had reason to believe it</p> <p>12 wasn't, presumably I wouldn't have signed it.</p> <p>13 Q. Okay. And do you have any reason to</p> <p>14 believe right now that any monthly operating</p> <p>15 report that has your signature on it was</p> <p>16 inaccurate in any way?</p> <p>17 MS. DEITSCH-PEREZ: Objection to the</p> <p>18 form.</p> <p>19 A. My understanding of the monthly</p> <p>20 operating reports is we were filing them in</p> <p>21 accordance with the standards set by the Court.</p> <p>22 It wasn't – you know, again, I don't – you</p> <p>23 know, it wasn't GAAP. It wasn't these other</p> <p>24 standards, so I testified I didn't have</p> <p>25 experience in this. The CRO was running the</p>	<p>Page 257</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 show. I followed their advice.</p> <p>3 Q. But you assured yourself that</p> <p>4 everything in the report was accurate before</p> <p>5 you signed them; correct?</p> <p>6 MS. DANDENEAU: Objection to form.</p> <p>7 A. I trusted the guidance from the CRO</p> <p>8 and their team and their experience and their</p> <p>9 guidance for doing this for many, many, many</p> <p>10 years to – to – to categorize and put things</p> <p>11 in ways on the form.</p> <p>12 You know, my team had – had not</p> <p>13 filled out these forms before and needed all of</p> <p>14 this guidance. I'm not an expert in this. I</p> <p>15 have oversight of it. I signed the form. DSI</p> <p>16 told me to.</p> <p>17 Q. And you and your team are the source</p> <p>18 of the information that DSI used to create the</p> <p>19 reports; correct?</p> <p>20 MS. DANDENEAU: Objection to form.</p> <p>21 A. The books and records reside with</p> <p>22 the – with – with the corporate accounting</p> <p>23 team.</p> <p>24 Q. Okay. And the corporate accounting</p> <p>25 team was the corporate accounting team that was</p>

<p>Page 258</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 under your direction; correct?</p> <p>3 A. Yes.</p> <p>4 Q. So -- so your team was responsible</p> <p>5 for maintaining Highland's books and records;</p> <p>6 correct?</p> <p>7 A. I'm sorry, my team was responsible?</p> <p>8 Q. Correct.</p> <p>9 A. Yes. They -- they -- they were</p> <p>10 the -- the -- the general ledger of Highland,</p> <p>11 that responsibility was with the corporate</p> <p>12 accounting team.</p> <p>13 Q. The corporate accounting group</p> <p>14 reported to you; correct?</p> <p>15 A. Yes.</p> <p>16 MR. MORRIS: Can we put up 41,</p> <p>17 please.</p> <p>18 (Exhibit 41 marked.)</p> <p>19 Q. All right. You will see that this</p> <p>20 is a report that is dated January 31st, 2020,</p> <p>21 but it is for the month ending December 2019.</p> <p>22 Do you see that?</p> <p>23 A. I do.</p> <p>24 Q. And you signed this report in your</p> <p>25 capacity as the chief financial officer of</p>	<p>Page 259</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Highland; correct?</p> <p>3 A. Yes.</p> <p>4 Q. And you're the preparer -- you're</p> <p>5 identified as the preparer of the report;</p> <p>6 correct?</p> <p>7 A. That is correct.</p> <p>8 Q. Do you recall participating in the</p> <p>9 preparation of monthly operating reports?</p> <p>10 A. As I testified earlier, it was put</p> <p>11 together, you know, with the team. The team</p> <p>12 worked with DSI to put these monthly operating</p> <p>13 reports together. We had no experience at this</p> <p>14 time of the monthly operating reports or things</p> <p>15 of this nature.</p> <p>16 MR. MORRIS: Can you turn to the</p> <p>17 next page, please.</p> <p>18 Q. Do you see a line item under assets</p> <p>19 due from affiliates?</p> <p>20 A. Yes, I do.</p> <p>21 Q. Okay. And to the best of your</p> <p>22 knowledge and understanding, as the person who</p> <p>23 is identified as the preparer of this report,</p> <p>24 does that line item include the affiliate loans</p> <p>25 that we've been talking about?</p>
<p>Page 260</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Again, I would have to see, just</p> <p>3 like we did with the financial statements of</p> <p>4 Highland and NexPoint, I would have to see a</p> <p>5 detailed build, but, you know, if you look at</p> <p>6 the other line items, you know, the only other</p> <p>7 place it could be would be in -- in other</p> <p>8 assets.</p> <p>9 Q. Okay. And as a matter of</p> <p>10 arithmetic, is it fair to say that is the value</p> <p>11 of the assets due from affiliates was more than</p> <p>12 25 percent of the value of Highland's total</p> <p>13 assets as of 12/31/2019?</p> <p>14 MS. DANDENEAU: Objection to form.</p> <p>15 A. I'm really not doing the mental math</p> <p>16 right now, so I've been going at this depo for</p> <p>17 hours, so I'm really not -- you know --</p> <p>18 Q. All right. No problem.</p> <p>19 A. -- these are millions of dollars.</p> <p>20 Q. Let's look at the Footnote 1,</p> <p>21 please. Do you see there is a reference to the</p> <p>22 Hunter Mountain note?</p> <p>23 A. Yes, I see that in Footnote 1.</p> <p>24 Q. Okay. And that's the reserve that</p> <p>25 was taken against that note?</p>	<p>Page 261</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes, that is what this indicates.</p> <p>3 Q. Okay. And were you aware that the</p> <p>4 reserve was being taken on that it was?</p> <p>5 A. I was -- I was aware, yeah, at some</p> <p>6 point, yes.</p> <p>7 Q. Okay. And are you aware of any</p> <p>8 reserve being taken with respect to any other</p> <p>9 note that was issued in favor of Highland?</p> <p>10 A. Again, as I testified, we didn't go</p> <p>11 through an analysis on -- on -- on the other</p> <p>12 notes.</p> <p>13 Q. Can we turn --</p> <p>14 A. I believe -- I believe it says that</p> <p>15 in Footnote 1, fair value has not been</p> <p>16 determined with respect to any of the notes.</p> <p>17 So this footnote -- footnotes, look,</p> <p>18 there has been no determination.</p> <p>19 Q. Okay. The determination was made in</p> <p>20 the audited financial statements just six</p> <p>21 months earlier; right? We saw that earlier?</p> <p>22 A. That was as of 12/31/18. I mean,</p> <p>23 things -- circumstances -- there's a bank --</p> <p>24 circumstances change, things change -- things</p> <p>25 change over time, you know, facts and</p>

<p>Page 262</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 circumstances change. Again, you have to do an</p> <p>3 analysis.</p> <p>4 Q. Okay. And you do recall that in</p> <p>5 Highland's 2018 financial statement, all of the</p> <p>6 notes issued by affiliates and Mr. Dondero that</p> <p>7 were due at year-end had a fair value equal to</p> <p>8 the carrying value; correct? We looked at</p> <p>9 that?</p> <p>10 A. Yes. That was in the – in the</p> <p>11 disclosure for the – for the affiliate notes,</p> <p>12 yes.</p> <p>13 Q. And – and you were obligated to</p> <p>14 share with PwC any subsequent events between</p> <p>15 the end of 2018 and the date that you signed</p> <p>16 your management representation letter on June</p> <p>17 3rd, 2019; correct?</p> <p>18 MS. DEITSCH-PEREZ: Object to the</p> <p>19 form.</p> <p>20 A. Yes. I – I – I signed the</p> <p>21 management, you know, my signature is in the</p> <p>22 management representation letter – I hope I'm</p> <p>23 answering your question – that is dated in</p> <p>24 June with the representations made in that</p> <p>25 management representation letter.</p>	<p>Page 263</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. And there was nothing that</p> <p>3 caused PricewaterhouseCoopers to include in</p> <p>4 subsequent events any adjustment to the</p> <p>5 conclusion that the fair value of the affiliate</p> <p>6 notes and the notes issued by Mr. Dondero</p> <p>7 equaled the carrying value; correct?</p> <p>8 MS. DANDENEAU: Objection to the</p> <p>9 form.</p> <p>10 A. That is correct. That is what was</p> <p>11 in the – in the – in the footnotes.</p> <p>12 Q. Okay. So are you aware of anything</p> <p>13 that occurred between June 3rd, 2019 and</p> <p>14 December 31st, 2019 that would have caused the</p> <p>15 fair value of the notes to differ from the</p> <p>16 carrying value?</p> <p>17 A. Yeah. Highland filed for</p> <p>18 bankruptcy, things changed – I mean, there was</p> <p>19 a bankruptcy filed in October of – of – of</p> <p>20 2019, right, the petition date that we've</p> <p>21 described earlier.</p> <p>22 I mean, I had a – I guess looking</p> <p>23 back naively, I thought we were going to get an</p> <p>24 audit from PwC for year-ended 2019, and when we</p> <p>25 had discussions with PwC, they were like, are</p>
<p>Page 264</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 you crazy, we're not auditing this. Values</p> <p>3 change, all these things change, bankruptcy</p> <p>4 changes the entire scenario. I mean – and</p> <p>5 they're like, we're not – we're not touching</p> <p>6 this.</p> <p>7 And so, you know, I was like, okay,</p> <p>8 sorry, I get it, okay, no an audit.</p> <p>9 I mean, it is – you know, and –</p> <p>10 you know, and we weren't preparing GAAP</p> <p>11 financial statements.</p> <p>12 Again, I didn't know what we were</p> <p>13 doing in relation to our financial statements,</p> <p>14 but these were the discussions I was having at</p> <p>15 the time. And yeah, I mean, filing bankruptcy</p> <p>16 from what I got from outside auditors and</p> <p>17 others involved changed things dramatically.</p> <p>18 Q. Okay. Highland wasn't the obligor</p> <p>19 under any of the notes that we're talking</p> <p>20 about; correct?</p> <p>21 A. No.</p> <p>22 Q. So –</p> <p>23 A. That's right.</p> <p>24 Q. So can you identify any fact that</p> <p>25 would cause the fair value to deviate from the</p>	<p>Page 265</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 carrying value during the seven-month period</p> <p>3 between June 3rd and the end of the year, 2019?</p> <p>4 MS. DANDENEAU: Objection to form.</p> <p>5 A. No. I mean, I'm putting myself back</p> <p>6 at that time, right. Hindsight is 2020, but we</p> <p>7 didn't do an analysis, but we would have done a</p> <p>8 fulsome analysis and looked at all of the facts</p> <p>9 and circumstances at the time, but asset values</p> <p>10 change. You know, there could have been a</p> <p>11 market crash in hindsight in 2020, which –</p> <p>12 which affected entities' abilities.</p> <p>13 There could have been all of these</p> <p>14 things, right, that – that happen. It is –</p> <p>15 it is easy to look back in hindsight, but when</p> <p>16 you are looking at this in – in realtime, the</p> <p>17 analysis is different, and again, we didn't do</p> <p>18 an analysis.</p> <p>19 Q. Okay. You didn't do an analysis.</p> <p>20 Do I have that right?</p> <p>21 A. I don't – I don't recall doing one</p> <p>22 or maybe – you know, I don't recall doing one.</p> <p>23 MR. MORRIS: Okay. I'm going to</p> <p>24 take a break. I may be done, so the time</p> <p>25 now is – is 4:30 your time. Let's just</p>

<p>Page 266</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 take a short break until 4:40 your time.</p> <p>3 MS. DANDENEAU: Okay.</p> <p>4 VIDEOGRAPHER: We're going off the</p> <p>5 record, 4:31 p.m.</p> <p>6 (Recess taken 4:31 p.m. to 4:43 p.m.)</p> <p>7 VIDEOGRAPHER: We are back on the</p> <p>8 record at 4:43 p.m.</p> <p>9 MR. MORRIS: I have no further</p> <p>10 questions.</p> <p>11 MR. RUKAVINA: Okay.</p> <p>12 Mr. Waterhouse, I will go next.</p> <p>13 EXAMINATION</p> <p>14 BY MR. RUKAVINA:</p> <p>15 Q. Sir, my name is Davor Rukavina. I'm</p> <p>16 the lawyer for –</p> <p>17 MR. MORRIS: Hey, Davor, just before</p> <p>18 you begin, I just want to put on the record</p> <p>19 Highland's objection to documents that were</p> <p>20 produced to me 10 minutes before the</p> <p>21 deposition began.</p> <p>22 MR. RUKAVINA: What the basis of</p> <p>23 your objection?</p> <p>24 MR. MORRIS: That they were due</p> <p>25 quite some time ago, and the fact that you</p>	<p>Page 267</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 had – I just think it's appropriate to –</p> <p>3 to dump documents on somebody 10 minutes</p> <p>4 before the deposition. I just think</p> <p>5 that's –</p> <p>6 MR. RUKAVINA: Well, these are</p> <p>7 documents Highland produced. I'm not aware</p> <p>8 of any rule I have to give you advance</p> <p>9 documents when I know for the record that</p> <p>10 other than the exhibits that you sent to us</p> <p>11 last week, most of the exhibits you used</p> <p>12 today you did not provide to me prior to</p> <p>13 this deposition.</p> <p>14 MR. MORRIS: No, but the documents</p> <p>15 were produced by me in – in litigation,</p> <p>16 right?</p> <p>17 MR. RUKAVINA: I'm going to use</p> <p>18 primarily, John, the documents that you</p> <p>19 produced to me today, but you may.</p> <p>20 MR. MORRIS: Primarily. I've got –</p> <p>21 I've got my objection. You have got your</p> <p>22 response. Proceed.</p> <p>23 Q. Mr. Waterhouse, again, I represent</p> <p>24 the advisors, HCMFA and NexPoint Advisors.</p> <p>25 Do you understand that?</p>
<p>Page 268</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes.</p> <p>3 Q. You and I have never met or talked</p> <p>4 before today, have we?</p> <p>5 A. No, I have – I have heard your</p> <p>6 voice on calls before.</p> <p>7 Q. Okay.</p> <p>8 MR. RUKAVINA: Madam Court Reporter,</p> <p>9 I will use a few exhibits today. My</p> <p>10 associate, Mr. Nguyen, will find some way</p> <p>11 to get them to you. I don't know how to do</p> <p>12 that, but it looks like you guys do.</p> <p>13 I am going to use numbers as well.</p> <p>14 But to differentiate them from Mr. Morris</p> <p>15 we're going to mark mine with the prefix A</p> <p>16 for advisors.</p> <p>17 Do you understand?</p> <p>18 COURT REPORTER: Yes.</p> <p>19 MR. RUKAVINA: Okay. Perfect.</p> <p>20 Q. Okay. So, Mr. Waterhouse, let's</p> <p>21 start with those two HCMFA notes that you were</p> <p>22 asked about, one for 5 million and one for</p> <p>23 2.4 million.</p> <p>24 Do you recall those notes?</p> <p>25 A. Yes.</p>	<p>Page 269</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Were you ever the CFO of HCMFA?</p> <p>3 A. I don't recall.</p> <p>4 Q. So to the best of your recollection,</p> <p>5 you were still an officer of HCMFA in 2019,</p> <p>6 just that your title was treasurer?</p> <p>7 MR. MORRIS: Object to the form of</p> <p>8 the question. There is no leading here.</p> <p>9 He works for your client.</p> <p>10 MS. DANDENEAU: That is not – that</p> <p>11 is not true.</p> <p>12 MR. MORRIS: He's the treasurer –</p> <p>13 he is the treasurer of your client. I</p> <p>14 don't – I'm going to object every time you</p> <p>15 try to lead, so...</p> <p>16 MR. RUKAVINA: Totally fine to</p> <p>17 object.</p> <p>18 MR. MORRIS: Okay.</p> <p>19 Q. Please answer my question,</p> <p>20 Mr. Waterhouse.</p> <p>21 A. I'm sorry, could you repeat? There</p> <p>22 was...</p> <p>23 Q. Yes. You were – you testified</p> <p>24 earlier that in 2019 you were an officer of</p> <p>25 HCMFA; correct?</p>

<p>Page 270</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes, I testified that I was the</p> <p>3 treasurer and I didn't know if that incumbency</p> <p>4 certificate, you know, was one that appointed</p> <p>5 me as a treasurer, but yes.</p> <p>6 Q. I'm just trying to confirm that</p> <p>7 sitting here today, to the best of your</p> <p>8 recollection, at that time you were – your</p> <p>9 title was treasurer. It was not chief</p> <p>10 financial officer.</p> <p>11 A. I don't recall that being my title.</p> <p>12 Q. Okay. And in May of 2019, however,</p> <p>13 I think you testified you were the chief</p> <p>14 financial officer of the debtor; correct?</p> <p>15 MR. MORRIS: Objection to the form</p> <p>16 of the question.</p> <p>17 A. Yes, I was – yes.</p> <p>18 Q. Okay. As such, in May of 2019, did</p> <p>19 you have the authority, to your understanding,</p> <p>20 to unilaterally loan \$5 million or \$2.4 million</p> <p>21 to anyone on behalf of the debtor?</p> <p>22 MR. MORRIS: Objection to the form</p> <p>23 of the question.</p> <p>24 A. Sorry, can you repeat that?</p> <p>25 Q. Yes. So in your capacity as the</p>	<p>Page 271</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 chief financial officer of the debtor, Highland</p> <p>3 Capital Management, L.P., in May of 2019, did</p> <p>4 you believe that you unilaterally, just Frank</p> <p>5 Waterhouse, had the authority to loan on behalf</p> <p>6 of the debtor to anyone \$5 million and</p> <p>7 \$2.4 million?</p> <p>8 MR. MORRIS: Objection to the form</p> <p>9 of the question.</p> <p>10 A. No.</p> <p>11 Q. Is it because loans of that amount</p> <p>12 would have had to be approved by someone else?</p> <p>13 A. Yes.</p> <p>14 Q. Who in '20 – in May of 2019, if</p> <p>15 Highland wanted to loan 5 million or</p> <p>16 \$2.4 million to someone, what would have been</p> <p>17 the internal approval procedure?</p> <p>18 MR. MORRIS: Objection to the form</p> <p>19 of the question.</p> <p>20 A. If – if we had loans of that nature</p> <p>21 that needed to be made due to their size, we</p> <p>22 would have gotten approval from the – the</p> <p>23 president of Highland.</p> <p>24 Q. And who that was individual?</p> <p>25 A. It was James Dondero.</p>
<p>Page 272</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. Now, I'm going to ask you a</p> <p>3 similar question but for a different entity.</p> <p>4 In May of 2019, as the treasurer of</p> <p>5 HCMFA, did you believe that you unilaterally</p> <p>6 had the ability to cause HCMFA to become the</p> <p>7 borrower of a \$5 million loan and a</p> <p>8 \$2.4 million loan?</p> <p>9 MR. MORRIS: Objection to the form</p> <p>10 of the question.</p> <p>11 A. No.</p> <p>12 Q. What would – what would the</p> <p>13 approval have taken place – strike that.</p> <p>14 What would the approval process have</p> <p>15 been like in May of 2019 at HCMFA for HCMFA to</p> <p>16 take out a \$7.4 million loan?</p> <p>17 MR. MORRIS: Objection to the form</p> <p>18 of the question.</p> <p>19 A. The process would have been similar</p> <p>20 to what we just discussed on – for Highland to</p> <p>21 make a loan to others. So, again, you know,</p> <p>22 we – we would have – either myself or someone</p> <p>23 on the team would have discussed this with</p> <p>24 the – the president and owner of – of HCMFA.</p> <p>25 Q. And who was that individual?</p>	<p>Page 273</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. That was James – Jim Dondero.</p> <p>3 Q. So do I understand that in May of</p> <p>4 2019, on behalf of both the lender, Highland,</p> <p>5 and the borrower, HCMFA, Mr. Dondero would have</p> <p>6 had to approve \$7.4 million in loans?</p> <p>7 MR. MORRIS: Objection to the form</p> <p>8 of the question.</p> <p>9 A. Yes.</p> <p>10 Q. You mentioned when Mr. Morris was</p> <p>11 asking you the NAV error, N-A-V error, with</p> <p>12 respect to TerreStar, without writing us a</p> <p>13 novel, unless you feel like you have to, can</p> <p>14 you summarize what that NAV error was? What</p> <p>15 happened?</p> <p>16 A. There was a – in the Highland</p> <p>17 Global Allocation Fund, it owned at the time an</p> <p>18 equity interest in a company called TerreStar.</p> <p>19 And TerreStar is – at the time was a private</p> <p>20 company, and it may still be today. Again, I'm</p> <p>21 putting myself back then as a private company.</p> <p>22 We had – sorry, I don't mean we –</p> <p>23 the fund and the advisor used Houlihan Lokey</p> <p>24 to – to value that investment. And during</p> <p>25 that time there was some trades that were</p>

<p>Page 274</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 executed at market levels that were much lower</p> <p>3 than the Houlihan Lokey model.</p> <p>4 And based on information and</p> <p>5 discussions with the portfolio managers and,</p> <p>6 you know, principals that were very familiar</p> <p>7 with TerreStar, it was determined that those</p> <p>8 trades were non-orderly and they were not</p> <p>9 considered in the valuation as consulted with</p> <p>10 Houlihan Lokey and PricewaterhouseCoopers at</p> <p>11 the time.</p> <p>12 Subsequent to a – I can't remember</p> <p>13 the exact circumstances of why the SEC got</p> <p>14 involved. I think it was due to this – this</p> <p>15 investment became a material position in the</p> <p>16 fund. It triggered an SEC, kind of, inquiry.</p> <p>17 And as part of that inquiry, they questioned</p> <p>18 the valuation methodology. "They" meaning the</p> <p>19 SEC.</p> <p>20 And at the culmination of that</p> <p>21 process – this is all summarized – the value</p> <p>22 that was – that ultimately had to be used in</p> <p>23 the fund's NAV was different than – materially</p> <p>24 different than what the original valuation at</p> <p>25 Houlihan Lokey provided.</p>	<p>Page 275</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 And given that there was this fund</p> <p>3 was, as we discussed – I don't know if we</p> <p>4 discussed it, but it was an open-ended fund</p> <p>5 that was going – that was converting to a</p> <p>6 close-end fund.</p> <p>7 Due to the fact that it was an</p> <p>8 open-ended fund, you had to recalculate NAV and</p> <p>9 see what the impact was on people – on</p> <p>10 investors coming in and out of the fund and if</p> <p>11 there is a detrimental impact and to calculate</p> <p>12 what that – what that impact was and if there</p> <p>13 was any amounts owed to the fund pursuant to</p> <p>14 the error.</p> <p>15 Q. Were you personally involved</p> <p>16 internally at either Highland or HCMFA with</p> <p>17 these investigations and discussions with the</p> <p>18 SEC?</p> <p>19 A. I was.</p> <p>20 Q. Which other key people or senior</p> <p>21 people at Highland were involved, to your</p> <p>22 recollection?</p> <p>23 A. Myself, Thomas Surgent, David Klos,</p> <p>24 Lauren Thedford, Jason Post.</p> <p>25 Q. Mr. Dondero, was he –</p>
<p>Page 276</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I believe Cliff Stoops. I'm trying</p> <p>3 to think. And maybe that is – that is – that</p> <p>4 is – that is all kind I can recall at the</p> <p>5 moment.</p> <p>6 Q. Do you recall whether it was</p> <p>7 determined that the fund suffered losses as a</p> <p>8 result of this error?</p> <p>9 A. The – the fund – the – the –</p> <p>10 because the open-ended nature of the fund,</p> <p>11 there were losses that were attributable to</p> <p>12 investors. Meaning they – they would have</p> <p>13 redeemed and got a less money or – or they</p> <p>14 subscribed in and maybe because they didn't get</p> <p>15 enough shares and then they later sold and then</p> <p>16 they were harmed in that fashion.</p> <p>17 And there is – there is – there</p> <p>18 were very – there were very detailed</p> <p>19 calculations and, you know, all these different</p> <p>20 scenarios that we had to – I'm sorry, I keep</p> <p>21 saying "we" – that the individuals involved</p> <p>22 had to calculate and quantify.</p> <p>23 Q. Well, do you recall whether HCMFA</p> <p>24 admitted certain fault and liability for this</p> <p>25 error?</p>	<p>Page 277</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I don't recall specifically.</p> <p>3 Q. Do you recall whether HCMFA caused</p> <p>4 any funds to be paid to the investors and the</p> <p>5 fund the subject of the NAV error?</p> <p>6 A. Yes.</p> <p>7 Q. Do you recall the approximate amount</p> <p>8 of funds, moneys paid to the investors and the</p> <p>9 fund?</p> <p>10 A. It was – it was approximately</p> <p>11 \$7 million.</p> <p>12 Q. If I was to suggest 7.8 million,</p> <p>13 would that ring more true or are you sticking</p> <p>14 with your original answer?</p> <p>15 A. It was – it was approximately 7 –</p> <p>16 7 to \$8 million. Again, I don't remember the</p> <p>17 exact number, but it was in that ballpark.</p> <p>18 Q. So regardless of whether HCMFA</p> <p>19 accepted fault or liability, it caused some</p> <p>20 \$7 million or more to be paid out to affected</p> <p>21 investors in the fund?</p> <p>22 MR. MORRIS: Objection to the form</p> <p>23 of the question.</p> <p>24 A. And I want to make sure I'm</p> <p>25 understanding your question because there is a</p>

<p>Page 278</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 lot of different entities that are going on to</p> <p>3 my head.</p> <p>4 I think what you are saying is based</p> <p>5 on this error, shareholders were harmed by this</p> <p>6 approximately \$7.8 million – by approximately</p> <p>7 \$7.8 million. Is that what you are asking?</p> <p>8 Q. Yes, sir.</p> <p>9 A. Yes, that was – again, I don't have</p> <p>10 the exact numbers. If I take – it was – it</p> <p>11 was in that ballpark, and there is a detail</p> <p>12 calculation and write-up that could, that –</p> <p>13 that exists someplace.</p> <p>14 Q. Now, at that time, at the time that</p> <p>15 the NAV error occurred, was there a contract in</p> <p>16 place between HCMFA and the debtor pursuant to</p> <p>17 which the debtor was providing services to</p> <p>18 HCMFA?</p> <p>19 MR. MORRIS: Objection to the form</p> <p>20 of the question.</p> <p>21 A. Yes.</p> <p>22 Q. Was that contract generally called a</p> <p>23 shared services agreement?</p> <p>24 A. It was generally called that, but</p> <p>25 there were – there were – I mean, it – it –</p>	<p>Page 279</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 it depends on who you talk to, but yes,</p> <p>3 generally, there were – there are multiple</p> <p>4 agreements.</p> <p>5 Q. Pursuant to one or more of those</p> <p>6 agreements, was the debtor providing certain</p> <p>7 services to HCMFA?</p> <p>8 MR. MORRIS: Objection to the form</p> <p>9 of the question.</p> <p>10 A. Yes.</p> <p>11 Q. And can you at a very high level</p> <p>12 summarize in 2018 and 2019 what those services</p> <p>13 were?</p> <p>14 A. Yes, there was a – yes.</p> <p>15 Q. Okay. Please – please go – go</p> <p>16 through a short summary.</p> <p>17 A. There was a – a cost reimbursement</p> <p>18 agreement between Highland Capital Management</p> <p>19 Fund Advisors and Highland Capital Management,</p> <p>20 L.P. That agreement was for what we referred</p> <p>21 to as front office services, so investment</p> <p>22 management, things of that nature.</p> <p>23 There was I think what most people</p> <p>24 refer to as the shared services agreement that</p> <p>25 was – that agreement was between Highland</p>
<p>Page 280</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Capital Management Fund Advisors and Highland</p> <p>3 Capital Management for back office services.</p> <p>4 Q. And can you summarize what you mean</p> <p>5 by back office services?</p> <p>6 A. Those services were for accounting,</p> <p>7 finance, tax, valuation, HR, IT, you know,</p> <p>8 legal compliance, things of – things of those</p> <p>9 nature – or things of that nature, excuse me.</p> <p>10 Q. So in the spring of 2019, do you</p> <p>11 recall whether HCMFA took the position that it</p> <p>12 was actually Highland that caused the NAV error</p> <p>13 to occur pursuant to the valuation services</p> <p>14 that Highland was providing?</p> <p>15 MR. MORRIS: Objection to the form</p> <p>16 of the question.</p> <p>17 A. I do not recall.</p> <p>18 Q. Did you ever have any discussions</p> <p>19 with anyone, Jim Dondero or anyone in the first</p> <p>20 half of 2019 as to whether Highland, the</p> <p>21 debtor, that is, had any liability to HCMFA</p> <p>22 related to the NAV error?</p> <p>23 MR. MORRIS: Objection to the form</p> <p>24 of the question.</p> <p>25 A. I do not recall.</p>	<p>Page 281</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. And then you mentioned that the fund</p> <p>3 was being closed and some compensation related</p> <p>4 to that. Can you – can you elaborate? What</p> <p>5 were you referring to?</p> <p>6 A. Right. So the advisor, pursuant to</p> <p>7 board approval, put a proposal in front of the</p> <p>8 shareholders of the Highland Global Allocation</p> <p>9 Fund to convert it from an open-ended fund to a</p> <p>10 closed-end fund.</p> <p>11 So an open-ended fund, when</p> <p>12 shareholders subscribe to the fund or redeem</p> <p>13 into the fund, they do it at NAV.</p> <p>14 When it is – when you have a</p> <p>15 closed-end fund, closed-end funds are – are</p> <p>16 publicly-traded, like on the New York Stock</p> <p>17 Exchange, exchanges like that, and – and</p> <p>18 shareholders or investors, they're not –</p> <p>19 they're – they're not subscribing and</p> <p>20 redeeming with the fund. They are like shares</p> <p>21 of Apple.</p> <p>22 Those shares of the Highland Global</p> <p>23 Allocation Fund trade on an exchange, and that</p> <p>24 is how you, you know, that is how, you know,</p> <p>25 you become an equity owner in the fund or you</p>

<p>Page 282</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 sell your shares and you are no longer an</p> <p>3 equity owner.</p> <p>4 As part of that proposal, the</p> <p>5 advisor told shareholders if you – if you vote</p> <p>6 for this proposal to – to convert it from an</p> <p>7 open-ended fund to a closed-end fund, we will</p> <p>8 pay you some amounts of money. I forgot – a</p> <p>9 certain number of points. I think it was</p> <p>10 like – it was like two to three points or</p> <p>11 something – something like that.</p> <p>12 Q. Okay. You mentioned when Mr. Morris</p> <p>13 was asking you, going back to those two</p> <p>14 promissory notes, you will recall the 5 million</p> <p>15 and 2.4 million, you mentioned something to the</p> <p>16 effect that Mr. Dondero told – told you to pay</p> <p>17 some moneys out of Highland. Do you remember</p> <p>18 that discussion with Mr. Morris?</p> <p>19 A. I do.</p> <p>20 Q. So, to the best of your</p> <p>21 recollection, did you have a discussion with</p> <p>22 Mr. Dondero about making some payments in May</p> <p>23 of 2019 out of Highland?</p> <p>24 A. I recall, as I testified earlier,</p> <p>25 that I had a conversation with Mr. Dondero</p>	<p>Page 283</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 for – for these amounts attributable to – it</p> <p>3 was either the error – you know, the error,</p> <p>4 and in that conversation he said, go get the</p> <p>5 money from Highland. I believe that is what I</p> <p>6 testified earlier, and that – that is my</p> <p>7 recollection.</p> <p>8 Q. Do you recall if that was an</p> <p>9 in-person meeting or some other mode for the</p> <p>10 meeting?</p> <p>11 A. I – I – I recall that being</p> <p>12 in-person.</p> <p>13 Q. Do you recall if anyone else was</p> <p>14 present, or was it just you and Mr. Dondero?</p> <p>15 A. I recall just he and I.</p> <p>16 Q. And the moneys that he told you to</p> <p>17 find from – or get from Highland, was that in</p> <p>18 the amount of \$5 million and \$2.4 million?</p> <p>19 MR. MORRIS: Objection to the form</p> <p>20 of the question.</p> <p>21 A. I believe so, but I would have to go</p> <p>22 back and look and see when those moneys were</p> <p>23 actually paid into the – into the fund and,</p> <p>24 you know, when those transfers were done. If</p> <p>25 they were all done around that same time, then</p>
<p>Page 284</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 yes, I would say it was – it was all related</p> <p>3 to that.</p> <p>4 Q. Did Mr. Dondero tell you that those</p> <p>5 funds would be a loan from Highland to HCMFA?</p> <p>6 A. I don't recall.</p> <p>7 MR. MORRIS: Objection to the form</p> <p>8 of the question.</p> <p>9 Q. Now, and forgive me, I'm probably</p> <p>10 the only non-American born here, but I speak</p> <p>11 reasonably well in English. I don't recall,</p> <p>12 does that mean you don't remember or does that</p> <p>13 mean it didn't happen?</p> <p>14 MR. MORRIS: Objection to the form</p> <p>15 of the question.</p> <p>16 A. It – it means I don't – I don't</p> <p>17 remember.</p> <p>18 Q. Did Mr. Dondero tell you to have</p> <p>19 those two promissory notes prepared?</p> <p>20 A. I don't recall.</p> <p>21 Q. When you – again, when you say, I</p> <p>22 don't recall today, that means that sitting</p> <p>23 here today, you just don't remember one way or</p> <p>24 the other. Is that accurate?</p> <p>25 A. Yes.</p>	<p>Page 285</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Is it possible that you, having</p> <p>3 heard what Mr. Dondero said and seeing funds</p> <p>4 being transferred, assumed that that would be a</p> <p>5 loan without him actually telling you that</p> <p>6 would be a loan?</p> <p>7 MR. MORRIS: Objection to the form</p> <p>8 of the question.</p> <p>9 A. Sorry, I want to make sure – did I</p> <p>10 ask the amounts that were transferred that I –</p> <p>11 that – that I assumed that that was a loan?</p> <p>12 Q. Well, let me – let me take – let</p> <p>13 me try again.</p> <p>14 So you have established already that</p> <p>15 there were quite a number of promissory notes</p> <p>16 back and forth – I'm sorry, quite a number of</p> <p>17 promissory notes with affiliated companies and</p> <p>18 individuals owing Highland money; right?</p> <p>19 A. Yes.</p> <p>20 Q. And you have established that there</p> <p>21 were many transactions and transfers going back</p> <p>22 and forth over the years; right?</p> <p>23 MS. DANDENEAU: Objection to form.</p> <p>24 A. In – yes, in my capacity as CFO and</p> <p>25 my employment, yes, that is – yes.</p>

<p>Page 286</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. And that's part of the reason why</p> <p>3 you just can't remember some of the details</p> <p>4 today because this – this happened years ago,</p> <p>5 and there were a number of transactions. Is</p> <p>6 that accurate?</p> <p>7 MS. DANDENEAU: Objection to the</p> <p>8 form.</p> <p>9 MR. MORRIS: Objection to the form</p> <p>10 of the question.</p> <p>11 A. I mean, I deal with thousands of –</p> <p>12 of – of – of transactions, you know, whether</p> <p>13 it has – the processing of transactions, you</p> <p>14 know, if it has got, you know, more – more</p> <p>15 zeros, you know, behind it than others.</p> <p>16 When you look at thousands of</p> <p>17 transactions over the years for funds and</p> <p>18 advisors and – and, you know, financial</p> <p>19 statements, I mean, it is – it is very hard</p> <p>20 going back in – in – in my – you know,</p> <p>21 14-ish year career at – at Highland to</p> <p>22 remember a lot of those details, especially</p> <p>23 when I don't have any records or books or</p> <p>24 anything like that, and – and going back many</p> <p>25 years.</p>	<p>Page 287</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. And that is fine. That – that –</p> <p>3 that is why I asked the question.</p> <p>4 Is it possible in May of 2019 when</p> <p>5 Mr. Dondero told you to transfer the funds from</p> <p>6 Highland, you just assumed on your own that</p> <p>7 those would be loans without him actually</p> <p>8 telling you that those would be loans?</p> <p>9 MR. MORRIS: Objection to the form</p> <p>10 of the question.</p> <p>11 A. I don't know.</p> <p>12 Q. I'm sorry, you –</p> <p>13 A. I said I don't know.</p> <p>14 Q. Okay. Well, as the – as the CFO</p> <p>15 for Highland, if you saw \$7.4 million going</p> <p>16 out, you would feel some responsibility to</p> <p>17 account for that, wouldn't you?</p> <p>18 MR. MORRIS: Objection to the form</p> <p>19 of the question.</p> <p>20 A. Yes.</p> <p>21 Q. Is it fair to say that those would</p> <p>22 be in the range large enough to rise up to your</p> <p>23 level?</p> <p>24 MR. MORRIS: Objection to the form</p> <p>25 of the question.</p>
<p>Page 288</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. If – I don't know if I understand</p> <p>3 your question. Those amounts would arise to my</p> <p>4 level where I would be involved or...</p> <p>5 Q. You would want to know what a</p> <p>6 transfer for that amount, \$7.4 million, was all</p> <p>7 about, as the CFO of Highland, wouldn't you?</p> <p>8 MR. MORRIS: Objection to the form</p> <p>9 of the question.</p> <p>10 A. Yes, I make it – I mean, I – I</p> <p>11 review all sorts of payments, I mean, even</p> <p>12 smaller dollar payments on a periodic basis,</p> <p>13 you know, to – to – to understand and to make</p> <p>14 sure that we are paying things in a – you</p> <p>15 know, in – in – in an informed way. And, you</p> <p>16 know – and we're – and we're paying things</p> <p>17 pursuant to vendor contracts and things like</p> <p>18 that.</p> <p>19 Q. So as part of that, is it possible</p> <p>20 that seeing \$7.4 million go out you would have</p> <p>21 promissory notes made in order to keep a paper</p> <p>22 trail, assuming that those were loans, when</p> <p>23 perhaps they were never intended to be loans by</p> <p>24 Mr. Dondero?</p> <p>25 MR. MORRIS: Objection to the form</p>	<p>Page 289</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 of the question.</p> <p>3 A. I don't know. As I testified</p> <p>4 earlier, I had conversations with Mr. Dondero</p> <p>5 about – about the – the – the moneys that</p> <p>6 were needed for the NAV error. And I recall</p> <p>7 him saying go get it from Highland – or get it</p> <p>8 from Highland.</p> <p>9 Q. Well, why did you sign those</p> <p>10 promissory notes and why didn't you have him</p> <p>11 sign them?</p> <p>12 MR. MORRIS: Objection to the form</p> <p>13 of the question.</p> <p>14 A. I don't know. I don't know.</p> <p>15 Q. You mentioned earlier that you</p> <p>16 typically don't sign promissory notes. Am I</p> <p>17 remembering your testimony correctly?</p> <p>18 I mean, promissory notes on behalf</p> <p>19 of the entities. Not yourself, obviously.</p> <p>20 A. Yes, that is what I said earlier.</p> <p>21 Q. Do you recall any other promissory</p> <p>22 notes in the million-plus range that you had</p> <p>23 ever signed before on behalf of any entity?</p> <p>24 A. There is – there has been a lot of</p> <p>25 transactions over the years. I don't – I</p>

<p>Page 290</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 don't – I don't recall generally. I don't –</p> <p>3 I don't recall.</p> <p>4 Q. So – but to the best of your</p> <p>5 recollection, it was on your initiative,</p> <p>6 following your discussion with Mr. Dondero,</p> <p>7 that you had someone draft those two promissory</p> <p>8 notes; is that correct?</p> <p>9 MR. MORRIS: Objection to the form</p> <p>10 of the question.</p> <p>11 A. Yes, we would have – the team, as I</p> <p>12 stated earlier, we don't draft promissory</p> <p>13 notes. "The team" meaning the accounting and</p> <p>14 finance team.</p> <p>15 So the team would have worked with</p> <p>16 the legal group at Highland to draft any notes.</p> <p>17 Q. Do you believe or do you have any</p> <p>18 recollection as to whether you would have done</p> <p>19 that pursuant to an email or telephone call or</p> <p>20 in-person meeting?</p> <p>21 MR. MORRIS: Objection to the form</p> <p>22 of the question.</p> <p>23 A. Are you asking if I would have – if</p> <p>24 those notes would have been drafted pursuant to</p> <p>25 an email or phone call?</p>	<p>Page 291</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Strike that.</p> <p>3 Do you recall whether you sent an</p> <p>4 email to anyone asking them to draft those two</p> <p>5 promissory notes?</p> <p>6 A. I don't recall because, again,</p> <p>7 once – I would have instructed – likely</p> <p>8 instructed the team to – to work with the</p> <p>9 legal group to draft these documents.</p> <p>10 I – I – I – yeah, I didn't – I</p> <p>11 mean, that is more an operational-type</p> <p>12 procedure. So, you know, a manager or a</p> <p>13 controller or working with legal. You know,</p> <p>14 they – they can certainly handle that task to</p> <p>15 get that – you know, to request that from</p> <p>16 legal.</p> <p>17 Q. And who on your team do you think</p> <p>18 you would have asked to do that?</p> <p>19 MR. MORRIS: Objection –</p> <p>20 Q. Who would have been the logical</p> <p>21 person or people, if you don't remember their</p> <p>22 name today?</p> <p>23 MR. MORRIS: Objection to the form</p> <p>24 of the question.</p> <p>25 A. It – it – there is only two</p>
<p>Page 292</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 managers of the group. That would have been</p> <p>3 Dave Klos or Kristin Hendrix.</p> <p>4 Dave was the – one of his duties</p> <p>5 was managing the valuation team, and so he was</p> <p>6 intimately involved with this process. So, you</p> <p>7 know...</p> <p>8 Q. Okay.</p> <p>9 A. I don't recall specifically but, I</p> <p>10 mean, my general – you know, I – I – I</p> <p>11 likely would have talked to Dave first about it</p> <p>12 versus someone like Kristin who hadn't been</p> <p>13 intimately involved.</p> <p>14 Q. And – and do you have a view as to</p> <p>15 whether it is most likely that you would have</p> <p>16 done that by email or in-person or how would</p> <p>17 you believe you would have communicated that to</p> <p>18 Mr. Klos?</p> <p>19 MR. MORRIS: Objection to the form</p> <p>20 of the question.</p> <p>21 A. I likely would have done that in</p> <p>22 person. Again, if things of this nature</p> <p>23 that – again, you have to put ourselves back</p> <p>24 to, we have been working on this very stressful</p> <p>25 project for many, many months. And once the</p>	<p>Page 293</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 go-ahead was to – you know, we see the light</p> <p>3 at the end of the tunnel with wrapping this up</p> <p>4 and making shareholders whole – sorry to say</p> <p>5 "we" – you know, the – so the folks that are</p> <p>6 involved in it.</p> <p>7 I like to talk to people</p> <p>8 face-to-face and – and – and go to – and go</p> <p>9 to their desk, because that shows if I'm going</p> <p>10 to their desk that – that is something that I</p> <p>11 want done, you know.</p> <p>12 Q. And do you remember, Mr. Waterhouse,</p> <p>13 getting those two promissory notes in paper</p> <p>14 format or by email before they were executed?</p> <p>15 MR. MORRIS: Objection to the form</p> <p>16 of the question.</p> <p>17 A. I don't recall.</p> <p>18 Q. For whatever was the ordinary course</p> <p>19 back then in May 2019, would you expect to have</p> <p>20 received them only on paper or would you have</p> <p>21 expected to have received them in Word document</p> <p>22 or PDF document by email?</p> <p>23 MR. MORRIS: Objection to the form</p> <p>24 of the question.</p> <p>25 A. I – I didn't sign – I signed very</p>

<p>Page 294</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 few documents via email. I can't say that it</p> <p>3 never happened, but people either stopped by my</p> <p>4 office and physically walked in documents for</p> <p>5 signature that we discussed face-to-face.</p> <p>6 Or documents were – if – if –</p> <p>7 if – if – let's say I wasn't there or I</p> <p>8 wasn't available, documents were dropped off.</p> <p>9 I had – I had some in- and outboxes in front</p> <p>10 of my – my office there at the Crescent.</p> <p>11 Documents would be dropped off for</p> <p>12 signature. There would be a cover sheet that</p> <p>13 would be – have been applied to those</p> <p>14 documents detailing, you know, who dropped it</p> <p>15 off, the purpose, why, what time.</p> <p>16 And then, you know, as I stated, I</p> <p>17 don't draft documents and I always go to the</p> <p>18 legal group and the compliance group to make</p> <p>19 sure that they're in the loop. And there is</p> <p>20 a – a box or section that says, Has legal</p> <p>21 reviewed or approved, or something to that</p> <p>22 nature.</p> <p>23 Again, I don't – I don't have</p> <p>24 access to that cover sheet anymore, but it</p> <p>25 was – it was something to that effect.</p>	<p>Page 295</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 And my assistant, you know, if she</p> <p>3 was there, she would review that – you know,</p> <p>4 whatever was being dropped off. And if that</p> <p>5 has legal, you know, reviewed or – reviewed or</p> <p>6 approved it, if that wasn't – if that stuff</p> <p>7 hadn't been done, it was like she would just</p> <p>8 tell them like, go – go – go to the legal</p> <p>9 group, because –</p> <p>10 Q. Let me – let me pause –</p> <p>11 MS. DANDENEAU: Let him finish.</p> <p>12 MR. MORRIS: Thank you. Go ahead.</p> <p>13 A. I take – go to the legal group</p> <p>14 because that – that was my – you know, I</p> <p>15 didn't – I didn't review anything that – that</p> <p>16 they weren't – you know, or there wasn't some</p> <p>17 representation made to me that they had</p> <p>18 reviewed, approved in some capacity.</p> <p>19 Again, my – my – my goal, as CFO,</p> <p>20 is to provide transparency and make sure that</p> <p>21 groups like compliance and other things – and</p> <p>22 the other group in legal are – are in – you</p> <p>23 know, their – they're made aware of</p> <p>24 transactions of – you know, that are crossing</p> <p>25 my desk.</p>
<p>Page 296</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Because I'm not in every</p> <p>3 conversation. They're not in every</p> <p>4 conversation – meaning legal compliance – and</p> <p>5 I just want to make sure that – that everyone</p> <p>6 is in sync to, you know, to – to the extent</p> <p>7 possible.</p> <p>8 Q. So if we summarize, you don't</p> <p>9 specifically remember signing these two notes,</p> <p>10 but most likely it would have been that they</p> <p>11 would have presented – been presented to you</p> <p>12 physically on paper?</p> <p>13 MR. MORRIS: Objection to the form</p> <p>14 of the question.</p> <p>15 A. They would – they would have been</p> <p>16 presented physically on paper most likely or</p> <p>17 someone would have left it. But, I mean,</p> <p>18 again, I don't – I don't recall.</p> <p>19 Q. I understand. Understand.</p> <p>20 When you signed – when you signed</p> <p>21 documents, when you personally signed</p> <p>22 documents, did you typically use a ink pen or</p> <p>23 did you use a stamp?</p> <p>24 A. No, I – I – I use a – an – an</p> <p>25 ink pen.</p>	<p>Page 297</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Do you know – was there a file at</p> <p>3 Highland kept anywhere with ink-signed</p> <p>4 originals of a promissory notes in general or</p> <p>5 these two promissory notes specifically?</p> <p>6 MR. MORRIS: Objection to the form</p> <p>7 of the question.</p> <p>8 A. Sorry, I just want to make sure I</p> <p>9 understand your question. Are you saying is</p> <p>10 there a file somewhere that has ink-signed</p> <p>11 originals of these two promissory notes?</p> <p>12 Q. Yes.</p> <p>13 A. I would – I would assume they're</p> <p>14 some place. I mean –</p> <p>15 Q. Well, was there a – was there a</p> <p>16 place where Highland generally kept originals</p> <p>17 of promissory notes owed to it?</p> <p>18 A. I wouldn't – no.</p> <p>19 MR. RUKAVINA: Mr. Nguyen, would you</p> <p>20 please pull up my A7, alpha 7.</p> <p>21 Q. These are the two promissory notes,</p> <p>22 Mr. Waterhouse.</p> <p>23 (Exhibit A7 marked.)</p> <p>24 Q. And please – Mr. Waterhouse, please</p> <p>25 command my associate to scroll down as you need</p>

<p>Page 298</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 to, but I want you to take a very close look at</p> <p>3 your two signatures here and tell me whether</p> <p>4 you believe, in fact, that you ink signed them</p> <p>5 or whether you –</p> <p>6 MS. DANDENEAU: Mr. Rukavina,</p> <p>7 Mr. Waterhouse has the copies.</p> <p>8 MR. RUKAVINA: Perfect. Then you</p> <p>9 can take this down, Mr. Nguyen.</p> <p>10 A. These – these – these signatures</p> <p>11 are identical, now that I stare at them, and I</p> <p>12 mean, they are so close – I mean, they're</p> <p>13 identical that, I mean, even with my chicken</p> <p>14 scratch signature, I don't know if I can – you</p> <p>15 know, I do this 100 times, could I do that</p> <p>16 as – as precisely as I see between the two</p> <p>17 notes.</p> <p>18 Q. Well, that is why I ask.</p> <p>19 Mr. Waterhouse, now that you have examined</p> <p>20 them, does it seem like it is more likely that</p> <p>21 you actually electronically signed these?</p> <p>22 MR. MORRIS: Objection to the form</p> <p>23 of the question.</p> <p>24 A. Is – I don't – I don't recall</p> <p>25 specifically. As I said before, my assistant</p>	<p>Page 299</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 did have a – an electronic signature, and that</p> <p>3 was used from time to time. It wasn't as</p> <p>4 common practice back in 2019. It definitely</p> <p>5 was more common practice when we had to work</p> <p>6 from home and remotely for COVID because it</p> <p>7 that made it almost impossible to, right,</p> <p>8 provide wet signatures since we're all working</p> <p>9 from home remotely.</p> <p>10 Q. Well, going just for these two</p> <p>11 promissory notes, Mr. Waterhouse, in light of</p> <p>12 your inability to remember any details, are you</p> <p>13 sure you actually signed either or both of</p> <p>14 those notes?</p> <p>15 MS. DANDENEAU: Objection to form.</p> <p>16 A. I don't recall specifically</p> <p>17 signing – actually physically signing these</p> <p>18 notes. As I said before, I don't recall doing</p> <p>19 that. This – this looks like my signature,</p> <p>20 but yet these two signatures are identical.</p> <p>21 Q. So you don't recall physically</p> <p>22 signing them, and I take it you don't recall</p> <p>23 electronically signing them either?</p> <p>24 A. I don't recall. You know, Highland</p> <p>25 has all my emails. If that occurred, you know,</p>
<p>Page 300</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 you know, I don't have any of these records is</p> <p>3 what I'm saying. I don't have any of those</p> <p>4 records.</p> <p>5 Q. That is why I'm asking you these</p> <p>6 questions in great detail because I don't have</p> <p>7 those emails. I'm trying to – I'm hoping that</p> <p>8 you will give me some names or some details so</p> <p>9 I can go look for more emails, but again, you</p> <p>10 don't remember any – any individual, other</p> <p>11 than Mr. Dondero that we've discussed, you</p> <p>12 don't remember any individual with whom you</p> <p>13 discussed these promissory notes prior to their</p> <p>14 execution?</p> <p>15 MR. MORRIS: Objection to the form</p> <p>16 of the question.</p> <p>17 A. I don't recall discussing it with</p> <p>18 anybody else.</p> <p>19 Q. Okay.</p> <p>20 A. I mean, prior –</p> <p>21 Q. I understand.</p> <p>22 A. You know, there was no one else –</p> <p>23 there was no one else in that meeting that I</p> <p>24 recall with Mr. Dondero.</p> <p>25 Q. Now, when you established that by</p>	<p>Page 301</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 May of 2019 –</p> <p>3 A. And – and from what I recall, and</p> <p>4 the reason why I was by myself is – is, you</p> <p>5 know, I don't – I don't want to speculate, I'm</p> <p>6 sorry.</p> <p>7 Q. Okay. We have established that by</p> <p>8 May of 2019, in your view, the liabilities of</p> <p>9 HCMFA exceeded its assets; correct?</p> <p>10 A. Yeah. I mean, again, I don't have</p> <p>11 financial statements in front of me, but I</p> <p>12 think, if I recall, we'd have to go through the</p> <p>13 testimony with Mr. Morris, I believe that was</p> <p>14 the case.</p> <p>15 Q. In fact, you will recall that in</p> <p>16 April of 2019, Mr. Dondero signed a document</p> <p>17 that extended the demand feature of two prior</p> <p>18 notes to May 31, 2019. Do you recall that?</p> <p>19 MS. DEITSCH-PEREZ: I think you</p> <p>20 might – maybe have the court reporter read</p> <p>21 that back. You might have misspoke.</p> <p>22 (Record read.)</p> <p>23 MR. RUKAVINA: And I did misspeak.</p> <p>24 Q. I meant to say to May 31, 2021. Do</p> <p>25 you recall that, sir?</p>

<p>Page 302</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MR. MORRIS: Objection to the form</p> <p>3 of the question.</p> <p>4 A. Yes.</p> <p>5 MR. RUKAVINA: And, Mr. Nguyen, just</p> <p>6 so that the record is clear, will you please</p> <p>7 pull up my Exhibit Alpha 10, A10.</p> <p>8 (Exhibit A10 marked.)</p> <p>9 Q. You don't have this one in front of</p> <p>10 you, Mr. Waterhouse? This is the one that</p> <p>11 Mr. Morris used earlier. Do you see that</p> <p>12 document, sir?</p> <p>13 A. Yes, I do.</p> <p>14 Q. And this is what you were testifying</p> <p>15 about before when Mr. Morris was asking you.</p> <p>16 Do you remember that?</p> <p>17 A. Yes.</p> <p>18 Q. So here is my question for you,</p> <p>19 Mr. Waterhouse: As the chief financial officer</p> <p>20 of Highland, was it prudent for Highland less</p> <p>21 than three weeks later to be lending</p> <p>22 \$7.2 million to an insolvent entity that</p> <p>23 couldn't even then pay its debts back to</p> <p>24 Highland?</p> <p>25 MS. DANDENEAU: Objection to form.</p>	<p>Page 303</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MR. MORRIS: Objection to the form</p> <p>3 of the question.</p> <p>4 A. Sorry, I just want to make sure –</p> <p>5 are you asking me, did you say, was it prudent</p> <p>6 for Highland to loan \$7.4 million to HCMFA a</p> <p>7 few weeks after this document was executed?</p> <p>8 Q. Yes, and at a time when HCMFA's</p> <p>9 liabilities exceeded its assets.</p> <p>10 MR. MORRIS: Objection to the form</p> <p>11 of the question.</p> <p>12 A. I don't – it is odd. I don't know.</p> <p>13 MR. RUKAVINA: You can take this</p> <p>14 exhibit down, Mr. Nguyen.</p> <p>15 Q. Do you recall asking anyone,</p> <p>16 Mr. Dondero or – or anyone outside as to</p> <p>17 whether Highland ought to be lending</p> <p>18 \$7.4 million to HCMF regarding HCMF's</p> <p>19 creditworthiness?</p> <p>20 MR. MORRIS: Objection to the form</p> <p>21 of the question.</p> <p>22 A. I don't recall.</p> <p>23 Q. Did you receive personally any of</p> <p>24 that \$7.4 million?</p> <p>25 A. No.</p>
<p>Page 304</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Did you even –</p> <p>3 MR. MORRIS: I didn't hear that</p> <p>4 question, sir.</p> <p>5 MR. RUKAVINA: The one that he</p> <p>6 answered, John, or my new one?</p> <p>7 MR. MORRIS: No, no, your question,</p> <p>8 Davor.</p> <p>9 MR. RUKAVINA: I had asked him</p> <p>10 whether he received any of the</p> <p>11 \$7.4 million. He said no.</p> <p>12 MR. MORRIS: Yeah. I thought there</p> <p>13 was a question after that. Maybe I was</p> <p>14 mistaken. I apologize.</p> <p>15 MR. RUKAVINA: I had started a new</p> <p>16 question, so here, let me start the new</p> <p>17 question again.</p> <p>18 Q. Did you personally receive any</p> <p>19 direct benefit from those two notes for</p> <p>20 \$7.4 million?</p> <p>21 A. No.</p> <p>22 Q. Did you ever personally consider</p> <p>23 yourself obligated to repay either or both of</p> <p>24 those notes?</p> <p>25 A. No.</p>	<p>Page 305</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MR. RUKAVINA: Pull up those notes</p> <p>3 again, Mr. Nguyen.</p> <p>4 Q. You can have them in front of you,</p> <p>5 Exhibit 7, Mr. Waterhouse, whatever is easier</p> <p>6 for you. If you go to your signature page, my</p> <p>7 question to you is, why did you not include</p> <p>8 your title as treasurer by your name, Frank</p> <p>9 Waterhouse?</p> <p>10 MS. DANDENEAU: Objection to form.</p> <p>11 A. I didn't – I didn't draft this</p> <p>12 document.</p> <p>13 Q. So you relied on whoever drafted it</p> <p>14 to draft it correctly?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. But back then when you signed</p> <p>17 this, did it ever cross your mind that you were</p> <p>18 the maker on these notes?</p> <p>19 A. No.</p> <p>20 Q. Back then when you signed this</p> <p>21 document, did it ever cross your mind that you</p> <p>22 could be a co-obligor on these notes?</p> <p>23 A. No. I didn't receive \$7.4 million,</p> <p>24 I mean...</p> <p>25 Q. But can you say that HCMFA received</p>

<p>Page 306</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 \$7.4 million?</p> <p>3 A. I would have to go back and look and</p> <p>4 check in, you know, the – the financial</p> <p>5 records and the bank statements.</p> <p>6 MR. RUKAVINA: You can take this</p> <p>7 exhibit down, Mr. Nguyen.</p> <p>8 Q. Mr. Waterhouse, I'm not trying to be</p> <p>9 a smart-ass, but if the law says that because</p> <p>10 of the way that you signed this promissory</p> <p>11 note, if that is what the law says, that that</p> <p>12 made you personally – personally liable, then</p> <p>13 you would agree with me that that was never</p> <p>14 your intent?</p> <p>15 MR. MORRIS: Objection to the form</p> <p>16 of the question.</p> <p>17 A. That was never – I wouldn't sign a</p> <p>18 note and not get consideration in return.</p> <p>19 Q. So putting all other issues aside,</p> <p>20 if the law – if the law says that you were</p> <p>21 liable for those notes because of how you</p> <p>22 signed them, then would you agree with me that</p> <p>23 these notes are a mistake?</p> <p>24 MR. MORRIS: Objection to the form</p> <p>25 of the question.</p>	<p>Page 307</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MS. DANDENEAU: Objection to the</p> <p>3 form.</p> <p>4 A. Yes.</p> <p>5 Q. So do you agree with me that it's</p> <p>6 odd – I think that is the word you used –</p> <p>7 that Highland would be loaning \$7.4 million a</p> <p>8 few weeks after that extension to an entity</p> <p>9 whose liabilities exceeded its assets, and you</p> <p>10 would agree with me that it was never your</p> <p>11 intention to be in any way liable for these two</p> <p>12 promissory notes; correct?</p> <p>13 MR. MORRIS: Objection to the form</p> <p>14 of the question.</p> <p>15 A. Sorry, you – you asked a lot there.</p> <p>16 MR. RUKAVINA: I will strike it and</p> <p>17 I will move on.</p> <p>18 Let's go to – pull up Exhibit 9,</p> <p>19 please Mr. Nguyen – Alpha 9, I'm sorry, Alpha</p> <p>20 9, A9.</p> <p>21 (Exhibit A9 marked.)</p> <p>22 Q. Sir, take a moment to look at this,</p> <p>23 but this is an email, and you will see attached</p> <p>24 July 31, 2020 affiliate notes.</p> <p>25 Do you see that attachment?</p>
<p>Page 308</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And do you see an entry for</p> <p>4 Highland Capital Management Fund Advisors?</p> <p>5 MR. MORRIS: I'm sorry, hold on.</p> <p>6 Where are you looking?</p> <p>7 MR. RUKAVINA: Last page, John.</p> <p>8 MR. MORRIS: Is it the page on the</p> <p>9 screen?</p> <p>10 MR. RUKAVINA: Oh, I'm sorry.</p> <p>11 Mr. Nguyen just did it. Yes, the last page</p> <p>12 there.</p> <p>13 MR. MORRIS: Thank you.</p> <p>14 Q. Do you see an entry there for HCMFA?</p> <p>15 A. Yes.</p> <p>16 Q. About \$10.5 million.</p> <p>17 Do you see that?</p> <p>18 A. I do.</p> <p>19 Q. And, now, do you have any</p> <p>20 explanation for why if HCMFA owed \$7.4 million,</p> <p>21 plus the 5.3 million that had been extended,</p> <p>22 why that amount was only 10.5 million?</p> <p>23 A. I don't know. Okay.</p> <p>24 MR. RUKAVINA: Close this one and</p> <p>25 pull up, Mr. Nguyen, the schedules,</p>	<p>Page 309</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 schedule of assets. What exhibit is this</p> <p>3 of ours, Mr. Nguyen?</p> <p>4 MR. NGUYEN: This is A11.</p> <p>5 MR. RUKAVINA: Oh, this will be A11.</p> <p>6 (Exhibit A11 marked.)</p> <p>7 Q. You don't have this in front of you,</p> <p>8 Mr. Waterhouse?</p> <p>9 A. Okay.</p> <p>10 Q. This is what Mr. Morris used</p> <p>11 earlier. Do you remember looking at this with</p> <p>12 Mr. Morris?</p> <p>13 A. Yes.</p> <p>14 MR. RUKAVINA: You might have to</p> <p>15 zoom in a little. Okay.</p> <p>16 Q. Now, I see Affiliate Note A, B, and</p> <p>17 C.</p> <p>18 Do you have any recollection as to</p> <p>19 why the names of the affiliates are omitted?</p> <p>20 A. I don't. I testified earlier that,</p> <p>21 you know, the team worked with DSI in providing</p> <p>22 these. I – I don't – I don't know.</p> <p>23 Q. Can we deduce – is it logical to</p> <p>24 deduce that Affiliate Note A would be NexPoint</p> <p>25 given its size of \$24.5 million?</p>

<p>Page 310</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MR. MORRIS: Objection to the form</p> <p>3 of the question.</p> <p>4 A. I mean, it – it is a – it is – it</p> <p>5 is approximate.</p> <p>6 Q. Well, can we – can we deduce – or,</p> <p>7 I'm sorry, strike that.</p> <p>8 Can you, sitting here today,</p> <p>9 logically conclude that Affiliate Note B or C</p> <p>10 represents HCMFA?</p> <p>11 MR. MORRIS: Objection to the form</p> <p>12 of the question.</p> <p>13 A. I don't know. I don't know. I</p> <p>14 can't.</p> <p>15 Q. Okay. As of the petition date, we</p> <p>16 have established that HCMFA, under promissory</p> <p>17 notes, owed \$7.4 million and \$5.3 million to</p> <p>18 the debtor; correct?</p> <p>19 MR. MORRIS: Objection to the form</p> <p>20 of the question.</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And by my reckoning, that</p> <p>23 would be somewhere approaching \$13 million.</p> <p>24 MR. MORRIS: Objection to the form</p> <p>25 of the question.</p>	<p>Page 311</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. It would be \$12.7 million. Is that</p> <p>3 generally correct?</p> <p>4 A. Sorry, the amounts were 7.4, 5.3.</p> <p>5 Q. Yes.</p> <p>6 A. Okay. Yeah, that – that – I can</p> <p>7 do that math, yes.</p> <p>8 Q. Do you have any explanation or any</p> <p>9 understanding of why there is no similar entry</p> <p>10 listed here on the schedule of assets filed</p> <p>11 with the bankruptcy court?</p> <p>12 MR. MORRIS: Objection to the form</p> <p>13 of the question.</p> <p>14 A. I don't know. We have to look at</p> <p>15 the supporting schedules, like I talked about</p> <p>16 other – presumably there is – there is a</p> <p>17 build to the schedule that would provide the</p> <p>18 detail.</p> <p>19 Q. Well, that was going to be my next</p> <p>20 question. You anticipated it.</p> <p>21 MR. RUKAVINA: You can – you can</p> <p>22 take this down, Mr. Nguyen.</p> <p>23 Q. Do you believe that whenever you and</p> <p>24 your team provided the underlying data to the</p> <p>25 financial advisor that the actual names of the</p>
<p>Page 312</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 affiliates for Affiliate Note A, B, and C would</p> <p>3 have been listed there?</p> <p>4 A. Are you asking we provided the names</p> <p>5 to the financial advisor? I don't – I don't</p> <p>6 understand who the financial advisor is.</p> <p>7 Q. I'm sorry, DSI.</p> <p>8 Let me ask the question this way,</p> <p>9 Mr. Waterhouse.</p> <p>10 Whenever you provided information</p> <p>11 about the affiliate notes to DSI, do you</p> <p>12 believe that you would have included the actual</p> <p>13 names of the affiliates, you or your team, or</p> <p>14 that you would have done the Affiliate Note A,</p> <p>15 Note B, Note C?</p> <p>16 MR. MORRIS: Objection to the form</p> <p>17 of the question.</p> <p>18 MS. DANDENEAU: Objection to the</p> <p>19 form.</p> <p>20 A. We – like I testified earlier, when</p> <p>21 we were – we gave everything to – to DSI. We</p> <p>22 were giving all of our records, all of our</p> <p>23 files, everything to DSI. We weren't redacting</p> <p>24 information or saying, hey, here is a note,</p> <p>25 here is Affiliate Note A or B.</p>	<p>Page 313</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 I mean, it was – our job and our</p> <p>3 focus – and I testified in court back in 2019;</p> <p>4 right – was – was to be transparent and, you</p> <p>5 know, get DSI up to speed on – on the matters</p> <p>6 at Highland. So I can't see us redacting at</p> <p>7 that point.</p> <p>8 MR. RUKAVINA: Mr. Nguyen, will you</p> <p>9 please pull up Mr. Morris' Exhibit 36.</p> <p>10 Just the very first page, the very top</p> <p>11 email. You might zoom in a little bit.</p> <p>12 Q. Now, you recall being asked about</p> <p>13 this by Mr. Morris?</p> <p>14 A. Yes, I do.</p> <p>15 Q. And you wrote: The HCMFA note is a</p> <p>16 demand note.</p> <p>17 You wrote that; right?</p> <p>18 A. Yes.</p> <p>19 Q. And, in fact, weren't there by that</p> <p>20 point in time several notes?</p> <p>21 A. Yes, there were. Again, I don't –</p> <p>22 I don't remember everything specifically. I</p> <p>23 mean –</p> <p>24 Q. I understand. I understand.</p> <p>25 So this is an example where – where</p>

<p>Page 314</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 you might have made a mistake by referring to a</p> <p>3 singular instead of a plural; right?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And you – you wrote – a</p> <p>6 couple of sentences later, you wrote: There</p> <p>7 was an agreement between HCMLP and HCMFA the</p> <p>8 earliest they could demand is May 2021.</p> <p>9 You wrote that; right?</p> <p>10 A. Yes.</p> <p>11 Q. But I think you – you agreed with</p> <p>12 Mr. Morris that that can't possibly apply to</p> <p>13 the May 2019 notes, can it?</p> <p>14 MR. MORRIS: Objection to the form</p> <p>15 of the question. That is not what he</p> <p>16 testified to.</p> <p>17 Q. Let me ask – let me ask a different</p> <p>18 question.</p> <p>19 Sitting here today – or if you can</p> <p>20 answer me from your memory on October 6,</p> <p>21 2020 – did the April acknowledgment that</p> <p>22 extended the maturity date apply to the</p> <p>23 May 2019 notes also?</p> <p>24 A. I don't recall specifically.</p> <p>25 Q. Well, you recall that the notes that</p>	<p>Page 315</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 you signed were demand notes; right?</p> <p>3 A. Yes.</p> <p>4 Q. Do you find it logical, based on</p> <p>5 your experience, that had they intended to have</p> <p>6 a different or a set maturity date, you would</p> <p>7 have instructed that that set maturity date be</p> <p>8 included instead of a demand feature?</p> <p>9 MR. MORRIS: Objection to the form</p> <p>10 of the question.</p> <p>11 A. Sorry, just want to make sure I</p> <p>12 understand. You are saying that – that the</p> <p>13 \$5 million note, the \$2.4 million note, if</p> <p>14 those were supposed to be a term note, that I</p> <p>15 would have made sure that those were a term</p> <p>16 note?</p> <p>17 Q. I'm saying – I'm saying,</p> <p>18 Mr. Waterhouse, that on May the 2nd and May the</p> <p>19 3rd, 2019, if you intended that those two</p> <p>20 promissory notes could not be called until May</p> <p>21 2021, would you have included such language in</p> <p>22 those two promissory notes?</p> <p>23 MR. MORRIS: Objection to the form</p> <p>24 of the question.</p> <p>25 A. I guess – I'm sorry, I don't recall</p>
<p>Page 316</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 putting language in those May notes. I don't</p> <p>3 remember what language you are referring to.</p> <p>4 Q. Well, let's read this again.</p> <p>5 There was an agreement between HCMLP</p> <p>6 and HCMFA the earliest they could demand is May</p> <p>7 2021.</p> <p>8 Do you recall that agreement?</p> <p>9 A. Yes, that was the agreement we</p> <p>10 looked at earlier; correct?</p> <p>11 Q. Okay. Yes.</p> <p>12 Do you – do you understand now that</p> <p>13 that agreement that we looked at earlier also</p> <p>14 applied to the May 2019 notes that you signed?</p> <p>15 A. I don't – I don't know.</p> <p>16 Q. But as of October 6, 2020, you're</p> <p>17 writing that there is one demand note and</p> <p>18 you're categorizing that demand note as not</p> <p>19 being demandable on May 2021; correct?</p> <p>20 A. Yes.</p> <p>21 Q. And you know now that you made at</p> <p>22 least one mistake in this email; correct?</p> <p>23 MR. MORRIS: Objection to the form</p> <p>24 of the question.</p> <p>25 A. Yes.</p>	<p>Page 317</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MR. RUKAVINA: You can pull this</p> <p>3 down, Mr. Nguyen.</p> <p>4 Q. So, Mr. Waterhouse, you don't</p> <p>5 remember Mr. Dondero telling you to make these</p> <p>6 loans or not. HCMLP was loaning \$7.4 million</p> <p>7 to someone that their assets were less than</p> <p>8 their liabilities.</p> <p>9 We don't see on the July list of</p> <p>10 notes, where there is \$12.7 million of notes,</p> <p>11 we don't see that on the bankruptcy schedules,</p> <p>12 and we have this Exhibit 36 where you are</p> <p>13 confused.</p> <p>14 Are you prepared to tell me, sir,</p> <p>15 today that you might have made a mistake in</p> <p>16 executing those two promissory notes?</p> <p>17 MR. MORRIS: Objection to the form</p> <p>18 of the question.</p> <p>19 A. I – I don't know.</p> <p>20 Q. And if it turns out that you're</p> <p>21 personally liable for those promissory notes,</p> <p>22 it would certainly be a mistake, wouldn't it?</p> <p>23 MS. DANDENEAU: Objection to the</p> <p>24 form.</p> <p>25 MR. MORRIS: Join.</p>

<p>Page 318</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes.</p> <p>3 Q. If Mr. Dondero testifies that he</p> <p>4 never told you to make these loans, would you</p> <p>5 disagree with his testimony?</p> <p>6 MR. MORRIS: Objection to the form</p> <p>7 of the question.</p> <p>8 A. Like I testified earlier with my</p> <p>9 conversation with Mr. Dondero, all I recall is</p> <p>10 he said, get the money from Highland.</p> <p>11 Q. And if Mr. Dondero testifies that</p> <p>12 he, in consultation with other senior personnel</p> <p>13 at Highland, decided that Highland needed to</p> <p>14 pay HCMFA \$7.4 million as compensation for the</p> <p>15 NAV error and not a loan, would you have any</p> <p>16 reason to disagree with Mr. Dondero?</p> <p>17 MR. MORRIS: Objection to the form</p> <p>18 of the question.</p> <p>19 A. If that was – if that was his</p> <p>20 intent, yes, it would – I would –</p> <p>21 Q. Do you have any reason to disagree</p> <p>22 with him?</p> <p>23 MR. MORRIS: Objection to the form</p> <p>24 of the question.</p> <p>25 A. If that was his intent, I don't</p>	<p>Page 319</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 know. I don't know how I disagree with that.</p> <p>3 Q. And just to confirm, you don't</p> <p>4 remember ever asking Mr. Dondero whether you</p> <p>5 should have two promissory notes prepared?</p> <p>6 A. No.</p> <p>7 Q. And you don't remember discussing</p> <p>8 with Mr. Dondero what the terms of those two</p> <p>9 promissory notes should be?</p> <p>10 A. I don't recall – I testified all I</p> <p>11 recall is he said, get the money from Highland.</p> <p>12 I don't – the – the terms of the note, I</p> <p>13 don't recall ever having a discussion around</p> <p>14 the terms of the note, but since I don't draft</p> <p>15 the notes, that – there could have been a</p> <p>16 conversation with other people later.</p> <p>17 Q. Do you have any memory of whether</p> <p>18 after the notes were drafted, but before you</p> <p>19 signed them, that you communicated with</p> <p>20 Mr. Dondero in any way to just confirm or – or</p> <p>21 get his blessing or ratification to signing</p> <p>22 those notes?</p> <p>23 MR. MORRIS: Objection to the form</p> <p>24 of the question.</p> <p>25 A. I don't recall.</p>
<p>Page 320</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Again, the only thing you remember,</p> <p>3 sitting here today, was Mr. Dondero said, get</p> <p>4 the money from Highland, and that is it, that</p> <p>5 is all you remember?</p> <p>6 MR. MORRIS: Objection to the form</p> <p>7 of the question.</p> <p>8 A. I testified to that several times.</p> <p>9 This was over two years ago. A lot has</p> <p>10 happened. That is all I recall.</p> <p>11 Q. And help me here. I'm not very</p> <p>12 technologically astute. When you – and I – I</p> <p>13 recognize that you do it rarely, but when you</p> <p>14 sign a document electronically, do you believe</p> <p>15 that there is an electronic record of you</p> <p>16 having authorized or signed a document</p> <p>17 electronically?</p> <p>18 MR. MORRIS: Objection to the form</p> <p>19 of the question.</p> <p>20 A. I – I don't know the tech answer to</p> <p>21 that, but, you know, since I don't have – I</p> <p>22 don't ever attach my signature block</p> <p>23 electronically, my assistant would have done</p> <p>24 that, and if that is done over email like we</p> <p>25 did several times – you know, multiple,</p>	<p>Page 321</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 multiple times over COVID, she would attach my</p> <p>3 signature block and then email it out to</p> <p>4 whatever party.</p> <p>5 Q. What was your assistant's name in</p> <p>6 May 2019?</p> <p>7 A. It was Naomi Chisum.</p> <p>8 Q. Is she the only one? I'm sorry, was</p> <p>9 she your only assistant that would have maybe</p> <p>10 facilitated logistically something like you</p> <p>11 just described?</p> <p>12 A. You know, she was out on maternity</p> <p>13 leave at some point. I don't – I don't recall</p> <p>14 those dates where she was out for maternity</p> <p>15 leave. There was – there were folks backing</p> <p>16 her up. I don't recall specifically who</p> <p>17 those – who those, you know, administrative</p> <p>18 assistants were, and I don't recall</p> <p>19 specifically if she was out during this time on</p> <p>20 maternity leave.</p> <p>21 I do know that that she was out for</p> <p>22 a period of time, or who knows, or she could</p> <p>23 have been on vacation that day or, you know, I</p> <p>24 don't know.</p> <p>25 Q. Switching gears now, the two</p>

<p>Page 322</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 complaints that have been filed that is against</p> <p>3 HCMFA and NexPoint, did you see any drafts of</p> <p>4 those complaints before they were filed?</p> <p>5 MR. MORRIS: Objection to the form</p> <p>6 of the question, and to the extent that you</p> <p>7 had any communications with counsel or you</p> <p>8 were shown drafts of the complaints by</p> <p>9 counsel while you were employed by</p> <p>10 Highland, I direct you not to answer.</p> <p>11 A. I – I reviewed documents yesterday</p> <p>12 with counsel here. I believe that is the first</p> <p>13 time I have ever seen those.</p> <p>14 Q. Okay. Did you ever discuss with</p> <p>15 Mr. Seery these two lawsuits before or after</p> <p>16 they were filed?</p> <p>17 A. I don't recall.</p> <p>18 Q. Were you ever interviewed by legal</p> <p>19 counsel, to your knowledge, about these</p> <p>20 promissory notes before the complaints were</p> <p>21 filed? Without going into what was said, were</p> <p>22 you ever interviewed by legal counsel?</p> <p>23 MR. MORRIS: Objection to the form</p> <p>24 of the question.</p> <p>25 A. I don't recall.</p>	<p>Page 323</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Obviously with COVID, it changed,</p> <p>3 but – but before COVID, did you used to meet</p> <p>4 with Mr. Seery from time to time in-person?</p> <p>5 A. Yeah, I mean, so before COVID – so</p> <p>6 we're talking kind of late March, early April,</p> <p>7 right, there was about – I don't remember the</p> <p>8 specific date when the board for Highland was</p> <p>9 appointed. I believe it was around February of</p> <p>10 2020, so maybe there was a month-and-a-half,</p> <p>11 two-month window where we were meeting</p> <p>12 in-person or, you know, like we were actually</p> <p>13 in the office, excuse me, we were in the</p> <p>14 office.</p> <p>15 And, you know, when they were first</p> <p>16 appointed, the board members and Mr. Seery</p> <p>17 were – were definitely down here more</p> <p>18 in-person.</p> <p>19 Q. Did you ever see Mr. Seery taking</p> <p>20 written notes of – of his meetings with you or</p> <p>21 others?</p> <p>22 A. I don't recall.</p> <p>23 Q. Do you recall on any Zoom or video</p> <p>24 conference with Mr. Seery, seeing him take</p> <p>25 notes, written notes?</p>
<p>Page 324</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. The Zoom calls we had, I don't</p> <p>3 recall having seen video or, you know, or if it</p> <p>4 was on Zoom, I just remember it being – well,</p> <p>5 no, you know what, there were some – you know,</p> <p>6 I take that back.</p> <p>7 So there were – there were some</p> <p>8 times that I did remember seeing Mr. Seery</p> <p>9 on – on some of the Zoom calls.</p> <p>10 Q. Well, let me –</p> <p>11 A. I don't – sorry, I'm thinking. I'm</p> <p>12 thinking – I'm going back. I'm trying to</p> <p>13 process this.</p> <p>14 Q. I can make it much quicker,</p> <p>15 Mr. Waterhouse. I have heard – I have heard</p> <p>16 that Mr. Seery is a copious note taker.</p> <p>17 Do you have any knowledge about</p> <p>18 that?</p> <p>19 A. No.</p> <p>20 Q. Okay. Switching gears yet again,</p> <p>21 and this will be last theme. Do you need a</p> <p>22 restroom break, or are you good to go for</p> <p>23 another half an hour?</p> <p>24 MS. DEITSCH-PEREZ: I need a</p> <p>25 restroom break.</p>	<p>Page 325</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MR. RUKAVINA: Can we make it five</p> <p>3 minutes?</p> <p>4 THE WITNESS: Five minutes would be</p> <p>5 great.</p> <p>6 VIDEOGRAPHER: We're going off the</p> <p>7 record at 5:53 p.m.</p> <p>8 (Recess taken 5:53 p.m. to 5:59 p.m.)</p> <p>9 VIDEOGRAPHER: We are back on the</p> <p>10 record at 5:59 p.m.</p> <p>11 Q. Mr. Waterhouse, I had asked you</p> <p>12 earlier about contracts between HCMFA and the</p> <p>13 debtor, and now I'm going to talk about</p> <p>14 contracts between the debtor and NexPoint</p> <p>15 Advisors. Okay?</p> <p>16 A. Okay.</p> <p>17 Q. Now, were there contracts similar to</p> <p>18 the ones with HCMFA that NexPoint had in the</p> <p>19 nature of employee reimbursement and shared</p> <p>20 services?</p> <p>21 A. Yes, they – NexPoint Advisors and</p> <p>22 Highland Capital Management Fund Advisors had</p> <p>23 cost reimbursement and shared services</p> <p>24 agreements with Highland Capital Management,</p> <p>25 L.P.</p>

<p>Page 326</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. And was that shared services</p> <p>3 agreement, to the best of your understanding,</p> <p>4 in place as of December 31, 2020?</p> <p>5 A. It was – it was terminated at some</p> <p>6 point, and I remember the contracts had</p> <p>7 different termination dates, but I think the –</p> <p>8 the date of termination was January 31st of</p> <p>9 2021, after the termination was put in.</p> <p>10 So yeah, it would be in place at the</p> <p>11 end of the year of December – it would be in</p> <p>12 place at December 31st, 2020.</p> <p>13 Q. And pursuant to that agreement as of</p> <p>14 December 31st, 2020, was the debtor providing</p> <p>15 what you would describe as back office services</p> <p>16 to NexPoint?</p> <p>17 A. Yes.</p> <p>18 Q. Would those have included accounting</p> <p>19 services?</p> <p>20 A. Yes.</p> <p>21 Q. And as part of those accounting</p> <p>22 services, would the debtor have assisted</p> <p>23 NexPoint with paying its bills?</p> <p>24 MR. MORRIS: Objection to the form</p> <p>25 of the question.</p>	<p>Page 327</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes.</p> <p>3 Q. So let's break that up. You were a</p> <p>4 treasurer of NexPoint as well in December of</p> <p>5 2020?</p> <p>6 MR. MORRIS: Objection to the form</p> <p>7 of the question.</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And in December of 2020, did</p> <p>10 NexPoint have its own bank accounts?</p> <p>11 A. Yes.</p> <p>12 Q. And did it use those bank accounts</p> <p>13 to pay various of its obligations?</p> <p>14 A. Yes.</p> <p>15 Q. Did employees of the debtor have the</p> <p>16 ability to cause transfers to be made from</p> <p>17 those bank accounts on behalf of NexPoint?</p> <p>18 A. Yes.</p> <p>19 Q. And is that one of services that the</p> <p>20 debtor provided NexPoint, basically ensuring</p> <p>21 that accounts payable and other obligations</p> <p>22 would be paid?</p> <p>23 A. Yes.</p> <p>24 MR. MORRIS: Objection to the form</p> <p>25 of the question.</p>
<p>Page 328</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. You answered yes?</p> <p>3 A. Yes.</p> <p>4 Q. And the payments, though, whose</p> <p>5 funds would they be made from?</p> <p>6 A. From the bank account of NexPoint</p> <p>7 Advisors. If they were NexPoint advisor</p> <p>8 obligations, it would be made from NexPoint</p> <p>9 Advisors' bank account.</p> <p>10 Q. So let's pull up Exhibit Alpha 1.</p> <p>11 You should have that – it is my Tab 1 or my</p> <p>12 Exhibit 1.</p> <p>13 (Exhibit A1 marked.)</p> <p>14 Q. So this is a – this is a series of</p> <p>15 emails, Mr. Waterhouse. Let's look at the</p> <p>16 first page here, November 25, 2020, between</p> <p>17 Kristin Hendrix and yourself.</p> <p>18 Do you see that, sir?</p> <p>19 A. I do.</p> <p>20 Q. And do you see where Ms. Hendrix</p> <p>21 writes: NPA.</p> <p>22 Do you know what NPA stood for?</p> <p>23 A. Yes.</p> <p>24 Q. And what does it stand for?</p> <p>25 A. NexPoint Advisors.</p>	<p>Page 329</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. And was that how you-all internally</p> <p>3 at Highland refer to NexPoint Advisors, L.P.?</p> <p>4 A. I mean, yes, amongst other things.</p> <p>5 Q. And she writes at the bottom of her</p> <p>6 email: Okay to release?</p> <p>7 Do you see that?</p> <p>8 A. Yes, I do.</p> <p>9 Q. So what –</p> <p>10 MR. MORRIS: Hold on one second.</p> <p>11 Okay. Go ahead.</p> <p>12 MR. RUKAVINA: Yeah.</p> <p>13 Q. So what is – what is Ms. Hendrix</p> <p>14 here on November 25 asking of you?</p> <p>15 A. She is asking me – so she – these</p> <p>16 are – these are payments – typically we would</p> <p>17 do an accounts payable run every week at the</p> <p>18 end of every Friday. But looking at this date,</p> <p>19 it is Wednesday, November 25th, which means, to</p> <p>20 me, it is likely Thanksgiving weekend.</p> <p>21 So this is the day before</p> <p>22 Thanksgiving, so this is the last kind of –</p> <p>23 kind of day before the holidays and vacation</p> <p>24 and things of that nature. So it is</p> <p>25 effectively the Friday of that week.</p>

<p>Page 330</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 So she is – she is putting in all</p> <p>3 the payments for the week because we batch</p> <p>4 payments weekly. And these are the payments</p> <p>5 that go out that week, and she is informing me</p> <p>6 of the payments and – you know, again, at the</p> <p>7 bottom of the email, she is asking for my okay</p> <p>8 to – to release these payments in the wire</p> <p>9 system.</p> <p>10 Q. So these would be accounts payable</p> <p>11 of NexPoint?</p> <p>12 A. I mean, it would be accounts payable</p> <p>13 for all of these entities listed on this email.</p> <p>14 Q. And who was Ms. Hendrix employed by</p> <p>15 in November and December of 2020?</p> <p>16 A. Highland Capital Management.</p> <p>17 Q. Okay. So – so part of the services</p> <p>18 that NexPoint had contracted with was for</p> <p>19 Highland to ensure that NexPoint timely paid</p> <p>20 its accounts payable; is that accurate?</p> <p>21 MR. MORRIS: Objection to the form</p> <p>22 of the question. You have got to be</p> <p>23 kidding me.</p> <p>24 Q. Is that accurate?</p> <p>25 A. Yes.</p>	<p>Page 331</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. And did NexPoint rely on employees</p> <p>3 of the debtor to ensure that NexPoint's</p> <p>4 accounts payable were timely paid?</p> <p>5 MR. MORRIS: Objection to the form</p> <p>6 of the question.</p> <p>7 A. Yes.</p> <p>8 MR. RUKAVINA: Let's flip to the</p> <p>9 next page, Mr. Nguyen, if you will please</p> <p>10 scroll to the next page.</p> <p>11 Q. So this is an email similar to the</p> <p>12 prior one, November 30th.</p> <p>13 Do you see where it says, NPA HCMFA,</p> <p>14 USD \$325,000 one-day loan?</p> <p>15 Do you see that, sir?</p> <p>16 A. I do.</p> <p>17 Q. Do you have any memory of what that</p> <p>18 was?</p> <p>19 A. I don't recall what that – what</p> <p>20 that payment was for.</p> <p>21 Q. Did it sometimes occur that one</p> <p>22 advisor would, on very short-terms, make loans</p> <p>23 to another advisor?</p> <p>24 A. Yes. This – this – this occurred</p> <p>25 from – from – from time to time. It actually</p>
<p>Page 332</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 looking at – I'm – I'm looking at the date of</p> <p>3 this email. It is November 30th. It is the</p> <p>4 last day of the month.</p> <p>5 HCMFA has obligations it needs to</p> <p>6 pay to its broker-dealer, which is HCFD. And</p> <p>7 it likely was short funds to make those</p> <p>8 obligations under that – under its agreement,</p> <p>9 and so it provided a one-day loan because on</p> <p>10 the next business day on 12/1 – or the next</p> <p>11 business day in December, it would receive</p> <p>12 management fees from the underlying funds that</p> <p>13 it managed and it would be able to pay back</p> <p>14 that loan to NexPoint Advisors.</p> <p>15 Q. So – so here Ms. Hendrix was</p> <p>16 seeking your approval to transfer \$325,000 from</p> <p>17 NexPoint to HCMFA for a one-day loan; is that</p> <p>18 correct?</p> <p>19 A. That is correct.</p> <p>20 Q. Let's flip to the next page, sir.</p> <p>21 MR. RUKAVINA: And, Mr. Nguyen, if</p> <p>22 you will please scroll down.</p> <p>23 Q. Now we have as an entry for</p> <p>24 \$325,000, 11/30 loan payment.</p> <p>25 Do you see that, sir?</p>	<p>Page 333</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes.</p> <p>3 Q. And that is probably the loan that</p> <p>4 was approved on the prior page?</p> <p>5 A. Yes, most likely.</p> <p>6 Q. So is it also true, sir, that in</p> <p>7 addition to accounts payable debtor employees</p> <p>8 would be assisting NexPoint with respect to</p> <p>9 paying back its debt?</p> <p>10 MR. MORRIS: Objection to the form</p> <p>11 of the question.</p> <p>12 A. I mean, yes, for loans of this</p> <p>13 nature, yes.</p> <p>14 Q. Well, what about long term loans?</p> <p>15 Was it reasonable for NexPoint to expect debtor</p> <p>16 employees to ensure that NexPoint timely paid</p> <p>17 its obligations under long-term notes?</p> <p>18 MR. MORRIS: Objection to the form</p> <p>19 of the question.</p> <p>20 MS. DANDENEAU: Objection to form.</p> <p>21 A. I mean, that is one of the things</p> <p>22 that the Highland personnel did provide to the</p> <p>23 advisors. Yes, we would – we would – over</p> <p>24 the years, yes, we – we – we – we did do</p> <p>25 that generally. Again, I don't remember</p>

<p>Page 334</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 specifically but, yes, generally we – you</p> <p>3 know, we did do that.</p> <p>4 Q. So do you recall – and we can pull</p> <p>5 it up, if need be – that under the NexPoint</p> <p>6 note that Mr. Morris asked you about earlier,</p> <p>7 the one for more than \$30 million, that</p> <p>8 NexPoint was obligated to make an annual</p> <p>9 payment of principal and interest?</p> <p>10 MR. MORRIS: Objection to the form</p> <p>11 of the question.</p> <p>12 A. Yes, it was – yes, it – it was an</p> <p>13 amortizing note. It was – you know, from what</p> <p>14 we reviewed earlier, it was payable by</p> <p>15 December 31st of each year. So – but are –</p> <p>16 are you asking me –</p> <p>17 Q. I'm just asking you, sir, if you</p> <p>18 recall the note.</p> <p>19 A. Yes, the \$30 million note, yes, we</p> <p>20 reviewed it earlier, yes.</p> <p>21 Q. And do you recall Mr. Morris had you</p> <p>22 go through the fact that NexPoint had made</p> <p>23 payments in years prior to 2020 on that note?</p> <p>24 A. I do.</p> <p>25 Q. And do you believe that employees of</p>	<p>Page 335</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 the debtor would have played any role in</p> <p>3 NexPoint having made those prior payments?</p> <p>4 MR. MORRIS: Objection to the form</p> <p>5 of the question.</p> <p>6 A. Yes.</p> <p>7 Q. And what role in years prior to 2020</p> <p>8 would employees of the debtor have had with</p> <p>9 respect to NexPoint making that annual payment?</p> <p>10 A. We – we – we would have – I keep</p> <p>11 saying "we." The team would have calculated</p> <p>12 any amounts due under that loan and other</p> <p>13 loans, as – as standard course.</p> <p>14 We would – since we provided</p> <p>15 treasury services to the advisors, we would</p> <p>16 inform the – the – the – we informed</p> <p>17 Mr. Dondero of any cash obligations that are</p> <p>18 forthcoming, whether we do cash projections.</p> <p>19 If, you know, any of these payments</p> <p>20 would have – or, you know, the sum total of</p> <p>21 all of these payments, including any note</p> <p>22 payments, if there were any cash shortfalls, we</p> <p>23 would have informed Mr. Dondero of any cash</p> <p>24 shortfalls. We could adequately plan, you</p> <p>25 know, in instances like that.</p>
<p>Page 336</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Or, sorry, we – I say "we" – I</p> <p>3 keep saying "we" – I keep wearing my – again,</p> <p>4 my – my treasurer hat.</p> <p>5 But, yes, it is to – it is to</p> <p>6 inform Mr. Dondero of the obligations of the</p> <p>7 advisors in terms of cash and obligations that</p> <p>8 are – are upcoming and that – and that are –</p> <p>9 are scheduled to be paid.</p> <p>10 Q. And would those obligations that are</p> <p>11 upcoming and scheduled to be paid prior to 2020</p> <p>12 have incurred the annual payment on that</p> <p>13 NexPoint \$30 million note?</p> <p>14 MS. DANDENEAU: Objection to form.</p> <p>15 MS. DEITSCH-PEREZ: Davor, I think</p> <p>16 you misspoke. You might want to just</p> <p>17 repeat the question.</p> <p>18 Q. Okay. Let me repeat the question,</p> <p>19 sir.</p> <p>20 Prior to 2020, those services that</p> <p>21 you just described, would that – on behalf of</p> <p>22 the debtor, would that have included NexPoint's</p> <p>23 payments on the \$30 million note?</p> <p>24 A. Yes.</p> <p>25 Q. So someone at the debtor in treasury</p>	<p>Page 337</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 or accounting would have sent some schedule or</p> <p>3 a reminder that a payment would be coming due</p> <p>4 in the future. Is that generally the practice?</p> <p>5 A. Yes, we would – you know, again, I</p> <p>6 didn't – I didn't micromanage the teams, but</p> <p>7 we had a – a corporate accounting calendar</p> <p>8 that we use as kind of a tickler file to keep</p> <p>9 track of payments.</p> <p>10 I actually, you know, don't know how</p> <p>11 actively they're using that in – in prior to</p> <p>12 2020, but it was actively used at some point.</p> <p>13 We did look at NexPoint cash</p> <p>14 periodically and cash for the other advisors as</p> <p>15 well and payments. You know, we – payments</p> <p>16 like this would have appeared in our cash</p> <p>17 projections, in the advisor's cash projections.</p> <p>18 And, again, as like I said earlier,</p> <p>19 they would have appeared there, so there would</p> <p>20 be time to plan for making any of these</p> <p>21 payments.</p> <p>22 Q. And based on your experience, would</p> <p>23 it have been reasonable for NexPoint to rely on</p> <p>24 the debtors' employees to inform NexPoint of an</p> <p>25 upcoming payment due on the \$30 million</p>

<p>Page 338</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 promissory note?</p> <p>3 MR. MORRIS: Objection to form of</p> <p>4 the question.</p> <p>5 MS. DANDENEAU: Objection to form.</p> <p>6 A. Yes. Yes, they did. I mean, but I</p> <p>7 mean, but I don't think these – these notes</p> <p>8 were any secret to anybody.</p> <p>9 Q. I understand, and I'm not suggesting</p> <p>10 otherwise.</p> <p>11 MR. RUKAVINA: Please pull up Alpha</p> <p>12 2, Mr. Nguyen.</p> <p>13 (Exhibit A2 marked.)</p> <p>14 Q. Now, this document is similar to the</p> <p>15 ones we've seen before as of December 31, 2020,</p> <p>16 and I don't see under NTA anything there for</p> <p>17 paying the promissory note to Highland.</p> <p>18 Do you see anything like that?</p> <p>19 A. I do not.</p> <p>20 MR. RUKAVINA: You can pull that –</p> <p>21 that exhibit down, Mr. Nguyen.</p> <p>22 Q. You are aware, of course, by now</p> <p>23 that, in fact, NexPoint failed to make the</p> <p>24 payment due December 31, 2020, are you not?</p> <p>25 A. I am aware, and yes, I do understand</p>	<p>Page 339</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 it.</p> <p>3 Q. Were you aware that Highland</p> <p>4 accelerated that \$30 million promissory note?</p> <p>5 A. I am aware.</p> <p>6 Q. Were you aware of that acceleration</p> <p>7 at the time that it occurred?</p> <p>8 A. I don't remember specifically.</p> <p>9 Q. Do you recall whether anyone asked</p> <p>10 you – prior to the acceleration, anyone asked</p> <p>11 you at Highland, what Highland should do with</p> <p>12 respect to the missed payment?</p> <p>13 A. Did anyone ask me what Highland</p> <p>14 should do about the missed payment?</p> <p>15 Q. Yes, before acceleration.</p> <p>16 MR. MORRIS: Objection to the form</p> <p>17 of the question.</p> <p>18 A. I mean, what – what I recall is</p> <p>19 there was the – sorry, are you asking me –</p> <p>20 MS. DANDENEAU: Why don't you just</p> <p>21 repeat the question, Mr. Rukavina.</p> <p>22 Q. Let me try again, Mr. Waterhouse,</p> <p>23 let me try again.</p> <p>24 I am saying you're the CFO of</p> <p>25 someone, in this case, Highland, and the</p>
<p>Page 340</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 borrower failed to make the required payment.</p> <p>3 Are you with me so far?</p> <p>4 A. I am.</p> <p>5 Q. Did anyone then ask you, what should</p> <p>6 we do with respect to our rights against the</p> <p>7 borrower that missed the payment?</p> <p>8 A. Not that I recall.</p> <p>9 Q. Did you play a role in the decision</p> <p>10 to accelerate that \$30 million promissory note?</p> <p>11 A. I did not.</p> <p>12 Q. Do you recall whether Mr. Seery ever</p> <p>13 asked you before the acceleration as to whether</p> <p>14 he should accelerate the note?</p> <p>15 A. I don't recall.</p> <p>16 Q. And you don't recall when you</p> <p>17 learned of the acceleration itself?</p> <p>18 MR. MORRIS: Objection to the form</p> <p>19 of that question.</p> <p>20 A. It was – it was sometime in</p> <p>21 early – in early 2021. I don't remember</p> <p>22 specifically.</p> <p>23 Q. But do you recall whether it was</p> <p>24 after the acceleration had already been</p> <p>25 transmitted?</p>	<p>Page 341</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MS. DANDENEAU: Objection to the</p> <p>3 form of the question.</p> <p>4 A. I don't recall.</p> <p>5 Q. Do you recall in early to mid</p> <p>6 January of 2021, after the default, discussing</p> <p>7 the default with Mr. Dondero?</p> <p>8 A. I do recall discussing with</p> <p>9 Mr. Dondero after December 31, 2020?</p> <p>10 Q. Yes, the fact of the default.</p> <p>11 A. I don't recall.</p> <p>12 MR. RUKAVINA: Let's pull up my</p> <p>13 Exhibit 6, Alpha 6.</p> <p>14 (Exhibit A6 marked.)</p> <p>15 MR. RUKAVINA: And, Mr. Nguyen, if</p> <p>16 you will please scroll down.</p> <p>17 Q. This email chain begins with you</p> <p>18 writing to Ms. Hendrix on January the 12th:</p> <p>19 NexPoint note to HCMLP.</p> <p>20 Do you see that, sir?</p> <p>21 A. I do.</p> <p>22 Q. Were you discussing this same</p> <p>23 \$30 million note we're talking about right now</p> <p>24 with Ms. Hendrix?</p> <p>25 A. Yes.</p>

<p>Page 342</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. Do you recall what prompted</p> <p>3 you to send that email to her?</p> <p>4 A. Yes, I had -- I had a conversation</p> <p>5 with Jim.</p> <p>6 Q. Okay. And what -- what did you</p> <p>7 discuss with Jim that led to this email chain?</p> <p>8 A. He -- he called me and he said he</p> <p>9 wanted to make payment on the NexPoint note,</p> <p>10 and I didn't -- I didn't know the -- the amount</p> <p>11 offhand, so I reached out to Kristin and got</p> <p>12 the details and relayed that to him.</p> <p>13 Q. And you see you sent that email to</p> <p>14 her at 11:15 a.m. Does that help you remember</p> <p>15 when you had this discussion with Mr. Dondero?</p> <p>16 In other words, was it that morning or the day</p> <p>17 before, or can you -- can you --</p> <p>18 A. No, it was -- it was that morning.</p> <p>19 Q. And do you recall how you had that</p> <p>20 conversation with him?</p> <p>21 MR. MORRIS: Objection to the form</p> <p>22 of the question.</p> <p>23 Q. By telephone, by email, in-person?</p> <p>24 A. Yeah, he -- he called me. I was at</p> <p>25 home. We were working from home here in</p>	<p>Page 343</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 December of 2020. He called me from home. He</p> <p>3 said he was in court. He wanted to -- he asked</p> <p>4 about, you know, making payment on the note and</p> <p>5 the amount, and so I didn't have those numbers</p> <p>6 in front of me, so I said I would get back to</p> <p>7 him. I wanted all the details, so here is</p> <p>8 this -- so I reached out to Kristin.</p> <p>9 Q. And then she gave you that</p> <p>10 \$1,406,000 figure?</p> <p>11 MR. RUKAVINA: Mr. Nguyen, if you</p> <p>12 will scroll up, please.</p> <p>13 A. Yes. Yeah, she -- the \$1,406,112.</p> <p>14 Q. And do you recall whether you</p> <p>15 conveyed that amount to Mr. Dondero?</p> <p>16 A. Yes. I -- I called him back and</p> <p>17 gave him -- gave him this amount.</p> <p>18 Q. Are you aware of whether NexPoint,</p> <p>19 in fact, then made that 1 million 406 and</p> <p>20 change payment?</p> <p>21 A. Yes, they did.</p> <p>22 Q. Did you discuss with Mr. Dondero at</p> <p>23 that time, either the first conference or the</p> <p>24 second conference that day -- strike that.</p> <p>25 When you conveyed the number to</p>
<p>Page 344</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Mr. Dondero, was -- was it also on January</p> <p>3 12th?</p> <p>4 A. Sorry, when I conveyed the</p> <p>5 \$1.4 million number?</p> <p>6 Q. Yes.</p> <p>7 A. Yes, yes, it was that -- it was --</p> <p>8 Q. So you had --</p> <p>9 A. It was that point.</p> <p>10 Q. Well, to the best of your</p> <p>11 recollection, you had a conference with</p> <p>12 Mr. Dondero by the telephone in the morning,</p> <p>13 and then another conference with him by</p> <p>14 telephone after 11:40 a.m. that morning?</p> <p>15 A. Yeah, I can't remember -- yeah, it</p> <p>16 was either that morning or it could have been,</p> <p>17 you know, early afternoon, but again, I</p> <p>18 remember calling him back, relaying this</p> <p>19 information to him, and he said, okay, pay --</p> <p>20 you know, make -- make this payment.</p> <p>21 Q. And during either of those two</p> <p>22 calls, did you tell Mr. Dondero anything to the</p> <p>23 effect that making those -- I'm sorry, making</p> <p>24 that payment would not de-accelerate the</p> <p>25 promissory note?</p>	<p>Page 345</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. No.</p> <p>3 Q. Did you tell him anything to the</p> <p>4 effect that making that payment would not cure</p> <p>5 the default?</p> <p>6 A. No.</p> <p>7 Q. Did you discuss that in any way with</p> <p>8 him?</p> <p>9 A. No, I did not.</p> <p>10 Q. Did he say why he wanted to have</p> <p>11 that \$1.4 million payment made?</p> <p>12 MR. MORRIS: Objection to the form</p> <p>13 of the question.</p> <p>14 A. He -- he -- he didn't go into</p> <p>15 specifics.</p> <p>16 Q. Did he say anything to you to the</p> <p>17 effect that if NexPoint makes that payment,</p> <p>18 then the note will be de-accelerated?</p> <p>19 MR. MORRIS: Objection to the form</p> <p>20 of the question.</p> <p>21 A. I don't recall.</p> <p>22 MR. RUKAVINA: You can put this one</p> <p>23 down, Mr. Nguyen.</p> <p>24 Q. And, again, when you say you don't</p> <p>25 recall, you mean you don't remember right now</p>

<p style="text-align: right;">Page 346</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 either way; correct?</p> <p>3 A. Yeah, I don't remember. I don't</p> <p>4 remember us discussing that.</p> <p>5 Q. Now – and we're almost done, I</p> <p>6 promise. I'm just going to – I don't know how</p> <p>7 to ask this question, so I'm just going to try</p> <p>8 to do my best.</p> <p>9 Prior to the default on December 31,</p> <p>10 2020, did Mr. Seery ever tell you any words to</p> <p>11 the effect that you or someone at Highland</p> <p>12 should ensure that NexPoint doesn't make its</p> <p>13 payment?</p> <p>14 A. No.</p> <p>15 Q. Did you have any hint or any belief</p> <p>16 that anyone at NexPoint – I'm sorry, strike</p> <p>17 that.</p> <p>18 Did you have any reason to believe</p> <p>19 that anyone with Highland was actively trying</p> <p>20 to get NexPoint to make that default by not</p> <p>21 paying on December 31?</p> <p>22 MR. MORRIS: Objection to the form</p> <p>23 of the question.</p> <p>24 A. Are you asking, did any Highland</p> <p>25 employees actively work to make – to</p>	<p style="text-align: right;">Page 347</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 somehow –</p> <p>3 Q. Yes. Let me take a step back. Let</p> <p>4 me take a step back.</p> <p>5 So you are aware now that as a</p> <p>6 result of that default, what was still some</p> <p>7 25-year note was accelerated and became</p> <p>8 immediately due. You are aware of that now;</p> <p>9 right?</p> <p>10 A. Yes.</p> <p>11 Q. And can you see how someone at</p> <p>12 Highland might actually have been pleased with</p> <p>13 that development?</p> <p>14 MR. MORRIS: Objection to the form.</p> <p>15 Q. Not that they were – not that they</p> <p>16 were pleased, but you can see how someone at</p> <p>17 Highland might have been pleased with that</p> <p>18 development?</p> <p>19 MR. MORRIS: Objection to the form</p> <p>20 of the question.</p> <p>21 MS. DANDENEAU: Object to form.</p> <p>22 A. I don't know how they would have</p> <p>23 reacted to that.</p> <p>24 Q. Okay. But you're not – you're not</p> <p>25 aware of any instructions or any actions being</p>
<p style="text-align: right;">Page 348</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 given or taken at Highland by Mr. Seery, the</p> <p>3 independent board, DSI, that – that would have</p> <p>4 basically led Highland to ensure that NexPoint</p> <p>5 would fail to make that payment?</p> <p>6 A. I'm not aware.</p> <p>7 Q. In other words, there wasn't a trick</p> <p>8 or a settlement; right?</p> <p>9 MS. DEITSCH-PEREZ: Objection to</p> <p>10 form.</p> <p>11 MS. DANDENEAU: Object to form.</p> <p>12 MR. MORRIS: Object to form.</p> <p>13 A. I'm not aware.</p> <p>14 Look, I'm not aware. I'm not in</p> <p>15 every conversation. I mean, and I'm just –</p> <p>16 again, I'm sitting at home. It is the end of</p> <p>17 the year. Again, I'm not aware.</p> <p>18 Q. That is a perfectly legitimate</p> <p>19 answer. I don't know why – why you think</p> <p>20 otherwise.</p> <p>21 Okay. Just give me one second to</p> <p>22 compose my thoughts.</p> <p>23 MS. DEITSCH-PEREZ: While you're</p> <p>24 taking your one second, why don't we take</p> <p>25 three minutes. I will be right back.</p>	<p style="text-align: right;">Page 349</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 VIDEOGRAPHER: Do we want to go off</p> <p>3 the record?</p> <p>4 MR. RUKAVINA: Yes.</p> <p>5 VIDEOGRAPHER: All right. We're</p> <p>6 going off the record at 6:27 p.m.</p> <p>7 (Recess taken 6:27 p.m. to 6:30 p.m.)</p> <p>8 VIDEOGRAPHER: We are back on the</p> <p>9 record at 6:30 p.m.</p> <p>10 MR. HORN: Is Deb back?</p> <p>11 MS. DANDENEAU: Are you asking about</p> <p>12 me? I'm here.</p> <p>13 MR. HORN: Oh, okay. I don't see</p> <p>14 you, sorry.</p> <p>15 Q. Actually, yeah, Mr. Waterhouse, so</p> <p>16 when you had –</p> <p>17 MS. DANDENEAU: Are you asking about</p> <p>18 Deb Dandeneau or Deborah? I mean, there</p> <p>19 are a lot – as we talked about, a lot of</p> <p>20 Debs. I'm here.</p> <p>21 MS. DEITSCH-PEREZ: I'm here.</p> <p>22 MR. HORN: Yes, I was asking about</p> <p>23 DDP.</p> <p>24 MS. DEITSCH-PEREZ: Oh, DDP is here.</p> <p>25 MR. HORN: Okay. Here we go. I'm</p>

<p>Page 350</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 going back on mute.</p> <p>3 MS. DANDENEAU: Get the right</p> <p>4 nomenclature.</p> <p>5 Q. Mr. Waterhouse, on January 12th,</p> <p>6 2021, when you had those talks with Mr. Dondero</p> <p>7 about the \$1.4 million payment, did you have a</p> <p>8 communication or a conversation with Mr. Seery</p> <p>9 about that payment after January 12th, 2021?</p> <p>10 A. I don't recall.</p> <p>11 Q. Well, in response to Mr. Dondero</p> <p>12 reaching out to you, do you recall on that day,</p> <p>13 January 12th, talking to Mr. Seery or anyone at</p> <p>14 Highland other than the email chain we just saw</p> <p>15 about Mr. Dondero's call with you?</p> <p>16 A. Did I talk to – I spoke with</p> <p>17 Kristin – I don't know if I spoke to her. I</p> <p>18 likely spoke to Kristin Hendrix because we had</p> <p>19 to get the wire on NexPoint's behalf to make</p> <p>20 the payment to Highland.</p> <p>21 Q. So it is true, then, that – that</p> <p>22 employees of the debtor did actually cause that</p> <p>23 payment to be made when it was made after</p> <p>24 January 12th?</p> <p>25 A. Yes, I mean, we – we – as I</p>	<p>Page 351</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 testified earlier, we provided that accounting</p> <p>3 finance treasury function as – under the</p> <p>4 shared services agreement. And so once I</p> <p>5 got the – I talked to Jim, got the approval to</p> <p>6 make this payment, we have to then make the</p> <p>7 payment, or the team does, and so the payment</p> <p>8 was made.</p> <p>9 Q. Okay. But – okay. And – and</p> <p>10 sitting here right now, after Jim called you,</p> <p>11 you don't remember talking to anyone other than</p> <p>12 the – the couple of people you mentioned,</p> <p>13 talking to anyone about something to the effect</p> <p>14 that, hey, Jim wants to make this payment now?</p> <p>15 MR. MORRIS: Objection to the form</p> <p>16 of the question.</p> <p>17 A. I don't – I don't recall.</p> <p>18 Q. And does that include legal counsel?</p> <p>19 Without going into any detail, on</p> <p>20 January 12th or before that payment was made,</p> <p>21 did you consult with legal counsel about</p> <p>22 anything having to do with the \$1.4 million</p> <p>23 payment?</p> <p>24 A. I don't recall.</p> <p>25 Q. Okay. Thank you, sir, for your</p>
<p>Page 352</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 time.</p> <p>3 MR. RUKAVINA: Pass the witness.</p> <p>4 MR. MORRIS: I just have a few</p> <p>5 questions, if I may.</p> <p>6 MS. DEITSCH-PEREZ: Don't you go at</p> <p>7 the end?</p> <p>8 MR. MORRIS: Oh, I apologize. He is</p> <p>9 your witness. I'm surprised you want to</p> <p>10 ask him questions, but go right ahead.</p> <p>11 MS. DEITSCH-PEREZ: Just have a</p> <p>12 couple of things.</p> <p>13 MR. RUKAVINA: And I will just</p> <p>14 object to that, that he's our witness.</p> <p>15 That's not –</p> <p>16 MR. MORRIS: I'm not talking to you.</p> <p>17 I'm not talking to you.</p> <p>18 MS. DANDENEAU: Also, Mr. Morris, it</p> <p>19 is – it is –</p> <p>20 MS. DEITSCH-PEREZ: He is not my</p> <p>21 witness. He's been subpoenaed by you.</p> <p>22 Okay?</p> <p>23 That is no offense, Mr. Waterhouse,</p> <p>24 I'm – I'm not – okay. Anyway.</p> <p>25 EXAMINATION</p>	<p>Page 353</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 BY MS. DEITSCH-PEREZ:</p> <p>3 Q. Good evening. I'm very sorry to be</p> <p>4 going last and I know you have had a long and</p> <p>5 taxing day, so I thank you for indulging me.</p> <p>6 The kinds of services that you</p> <p>7 describe that the – that Highland provided for</p> <p>8 NexPoint, did Highland also provide similar</p> <p>9 services to that to HCRE and HCMS?</p> <p>10 A. Yes.</p> <p>11 MR. MORRIS: Objection to the form</p> <p>12 of the question.</p> <p>13 Q. What kind of services did Highland</p> <p>14 provide to HCRE and HCMS?</p> <p>15 MR. MORRIS: Objection to the form</p> <p>16 of the question.</p> <p>17 MS. DEITSCH-PEREZ: What is your</p> <p>18 objection, John?</p> <p>19 MR. MORRIS: It is vague and</p> <p>20 ambiguous. Unlike the advisors and</p> <p>21 NexPoint, they actually had shared services</p> <p>22 agreements.</p> <p>23 MS. DEITSCH-PEREZ: I got – I</p> <p>24 understand your objection. That is fine.</p> <p>25 Q. Let's take them one at a time.</p>

<p>Page 354</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 What kinds of services did Highland</p> <p>3 provide to HCRE?</p> <p>4 MR. MORRIS: Objection to the form</p> <p>5 of the question.</p> <p>6 A. HCMS, Highland employees provided</p> <p>7 accounting services, treasury management</p> <p>8 services, potentially legal services. I</p> <p>9 don't – but I wouldn't have been directly</p> <p>10 involved in that. But as far as the teams that</p> <p>11 I manage, it was accounting, treasury, things</p> <p>12 of that nature.</p> <p>13 Q. Okay. And that was for HCM, LLP –</p> <p>14 A. And – and, sorry, it would also be</p> <p>15 any asset valuation if needed as well.</p> <p>16 Q. Okay. We went back and forth on</p> <p>17 each other and I apologize, so just to clarify.</p> <p>18 You were talking about the services</p> <p>19 that Highland Capital Management provided to</p> <p>20 HCMS; is that right?</p> <p>21 A. HCMS. So, again, yes. And</p> <p>22 accounting, treasury, valuation, and also tax</p> <p>23 services too.</p> <p>24 Q. Okay.</p> <p>25 A. Tax services. Look, I'm expanding</p>	<p>Page 355</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 this, their HR services as well.</p> <p>3 Q. Okay. And did that include bill</p> <p>4 paying?</p> <p>5 MR. MORRIS: Objection to the form</p> <p>6 of the question.</p> <p>7 Q. Did the services that HCM provided</p> <p>8 to HCMS include bill paying?</p> <p>9 MR. MORRIS: Objection to the form</p> <p>10 of the question.</p> <p>11 A. Yes.</p> <p>12 Q. And did the services that HCMLP</p> <p>13 provided to HCMS include scheduling upcoming</p> <p>14 bills?</p> <p>15 MR. MORRIS: Objection to the form</p> <p>16 of the question.</p> <p>17 A. Yes.</p> <p>18 Q. And did HCMLP regularly pay – cause</p> <p>19 to be paid the payments on loans HCMS had from</p> <p>20 HCMLP?</p> <p>21 MR. MORRIS: Objection to the form</p> <p>22 of the question.</p> <p>23 A. Yes.</p> <p>24 Q. Typically – if there is a</p> <p>25 typically, how far in advance of due dates did</p>
<p>Page 356</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 HCMLP cause HCMS to pay its bills?</p> <p>3 MR. MORRIS: Objection to the form</p> <p>4 of the question.</p> <p>5 A. I mean, it – it – it depend – it</p> <p>6 depended on the nature of the payment and the</p> <p>7 vendor, but, you know, if there were – if</p> <p>8 there were larger scheduled payments, you know,</p> <p>9 I would like to give at least 30 days notice.</p> <p>10 And that is – that is kind of my</p> <p>11 rule of thumb so no one is surprised.</p> <p>12 Q. Okay. And was it generally HCMLP's</p> <p>13 practice to timely pay HCMS' bills?</p> <p>14 MR. MORRIS: Objection to the form</p> <p>15 of the question.</p> <p>16 A. It – it – it – that depended on</p> <p>17 the nature of the payment.</p> <p>18 Q. Okay. And can you explain what you</p> <p>19 mean by that?</p> <p>20 A. Yeah, I mean if – if it was – I</p> <p>21 mean – if there was some professional fees</p> <p>22 that weren't – you know, they were due but</p> <p>23 they weren't urgent, those fees may not be paid</p> <p>24 as timely as others that have a due date or –</p> <p>25 or things like that.</p>	<p>Page 357</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. Are loan payments the kinds</p> <p>3 of thing that HCMLP would pay on time because</p> <p>4 of potential consequences of not paying on</p> <p>5 time?</p> <p>6 MR. MORRIS: Objection to the form</p> <p>7 of the question.</p> <p>8 A. Yes. As I testified earlier, we</p> <p>9 would want to give, you know, notice on – on</p> <p>10 – on larger payments and – and things of that</p> <p>11 nature so we didn't miss due dates.</p> <p>12 Q. Okay. And over the course of time,</p> <p>13 did HCMLP generally pay HCMS' loan payments in</p> <p>14 a timely fashion?</p> <p>15 MR. MORRIS: Objection to the form</p> <p>16 of the question.</p> <p>17 A. I can't remember specifically, but</p> <p>18 generally, yes.</p> <p>19 Q. Okay. Now, did HCMLP provide</p> <p>20 similar services to HCRE that you have</p> <p>21 described it provided to HCMS?</p> <p>22 MR. MORRIS: Objection to the form</p> <p>23 of the question.</p> <p>24 A. Yes, but I don't think it – it</p> <p>25 provided – I don't think it provided HR</p>

<p>Page 358</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 services.</p> <p>3 Q. Can you describe the accounting and</p> <p>4 treasury services that HCMLP provided for HCRE?</p> <p>5 A. Yeah, it – it would provide</p> <p>6 bookkeeping services on a – on a periodic</p> <p>7 basis. It would make payments, you know, as</p> <p>8 needed.</p> <p>9 Q. Okay. So did it provide –</p> <p>10 A. And – and I believe it – it – it</p> <p>11 provided tax services as well.</p> <p>12 Q. Okay. And so did it provide the</p> <p>13 same kind of bill – did HCMLP provide the same</p> <p>14 kind of bill-paying services for HCRE that it</p> <p>15 provided for HCMS and NexPoint?</p> <p>16 MR. MORRIS: Objection to the form</p> <p>17 of the question.</p> <p>18 A. Yes.</p> <p>19 Q. And over the course of time, did</p> <p>20 HCMLP generally cause to be made the loan</p> <p>21 payments that HCRE owed to HCMLP?</p> <p>22 MR. MORRIS: Objection to the form</p> <p>23 of the question.</p> <p>24 A. Yes.</p> <p>25 Q. Did HCMLP make loan payment – the</p>	<p>Page 359</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 loan payment that was due from HCMS to HCMLP in</p> <p>3 December of 2020?</p> <p>4 MR. MORRIS: Objection to the form</p> <p>5 of the question.</p> <p>6 A. I don't believe that payment –</p> <p>7 payment was made.</p> <p>8 Q. Okay. And when HCMLP caused HCMS in</p> <p>9 the past to make loan payments, whose money did</p> <p>10 it use to make those payments?</p> <p>11 MR. MORRIS: Objection to the form</p> <p>12 of the question.</p> <p>13 A. It was the – the money in HCMS's</p> <p>14 operating account would be made to that –</p> <p>15 those moneys would be used to make payment to</p> <p>16 Highland Capital Management.</p> <p>17 Q. Okay. And Highland – is it correct</p> <p>18 that Highland Capital Management personnel had</p> <p>19 the access to HCMS's accounts to be able to</p> <p>20 cause such payments to be made?</p> <p>21 A. Yes, Highland personnel had access</p> <p>22 to those accounts.</p> <p>23 Q. Okay. And so now for HCRE, whose</p> <p>24 money was used when HCMLP caused HCRE</p> <p>25 payments – loan payments to Highland to be</p>
<p>Page 360</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 made?</p> <p>3 MR. MORRIS: Objection to the form</p> <p>4 of the question.</p> <p>5 A. It was – it was cash in HCRE's bank</p> <p>6 account that would be used to make payments to</p> <p>7 Highland Capital Management.</p> <p>8 Q. Okay. And so did Highland Capital</p> <p>9 Management have access to HCRE's funds in order</p> <p>10 to be able to make such payments?</p> <p>11 MR. MORRIS: Objection to the form</p> <p>12 of the question.</p> <p>13 A. Personnel at Highland Capital</p> <p>14 Management had access to HCRE's bank account to</p> <p>15 effectuate the payments.</p> <p>16 Q. Okay. And was the payment due from</p> <p>17 HCRE to HCMLP due in December of 2020 made?</p> <p>18 A. It –</p> <p>19 Q. In December of 2020.</p> <p>20 A. It was not.</p> <p>21 Q. Okay. And was there money in HCRE's</p> <p>22 account that would have enabled the payment to</p> <p>23 be made had HCM personnel attempted to make the</p> <p>24 payment?</p> <p>25 MR. MORRIS: Objection to the form</p>	<p>Page 361</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 of the question.</p> <p>3 A. I – I don't recall.</p> <p>4 Q. Do you have any reason to believe</p> <p>5 that either HCRE or HCMS simply didn't have the</p> <p>6 funds on hand to make the December 2020</p> <p>7 payments?</p> <p>8 A. I don't know.</p> <p>9 Q. I guess I'm asking, do you have any</p> <p>10 reason to believe that they didn't have the</p> <p>11 funds?</p> <p>12 A. We managed cash for so many</p> <p>13 different entities and funds, and I don't</p> <p>14 recall, you know, where the cash position was</p> <p>15 for HCRE and HCMS at 12/31/2020.</p> <p>16 Q. Okay.</p> <p>17 A. I just don't recall, and I don't –</p> <p>18 and I don't remember what the loan payment</p> <p>19 obligations were from HCRE to Highland, and</p> <p>20 from HCMS to Highland. I don't recall. I</p> <p>21 don't recall, I mean...</p> <p>22 Q. Let me come at it a different way.</p> <p>23 Were the – were the payments that would</p> <p>24 otherwise have been due in December of 2020</p> <p>25 made in January of 2021 for HCMS and HCRE?</p>

<p>Page 362</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I believe the HCRE payment was made</p> <p>3 in January of 2021. I don't recall any</p> <p>4 payments being made from HCMS to Highland.</p> <p>5 Q. If it – how is it the HCRE payment</p> <p>6 came to be made? Why did you make it – why</p> <p>7 did HCM make the payment in January of 2021?</p> <p>8 A. Jim – Jim called me and instructed</p> <p>9 me to – to make the payment on behalf of HCRE,</p> <p>10 Jim Dondero – Jim Dondero.</p> <p>11 Q. Did he seem upset that – that the</p> <p>12 payment had not been made?</p> <p>13 A. Yeah. On the note that was, you</p> <p>14 know, that was the term note, yes, he – he was</p> <p>15 displeased that the – that the payment had not</p> <p>16 been made by year-end.</p> <p>17 Q. Okay. And did you make the – cause</p> <p>18 the payment to be made as – as requested?</p> <p>19 A. Yes.</p> <p>20 Q. And did anyone else from HCM</p> <p>21 participate with you in causing the payment to</p> <p>22 be made to – on the HCRE loan?</p> <p>23 A. Yes. It would have been Kristin</p> <p>24 Hendrix. I – again, I don't – as I testified</p> <p>25 earlier, I'm not an officer of HCRE. I don't</p>	<p>Page 363</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 believe I'm an authorized signer. So I</p> <p>3 can't – other personnel have to make payment</p> <p>4 from HCRE to – to – to – to Highland.</p> <p>5 Q. Okay. And in the conversation</p> <p>6 that – that you had with Mr. Dondero when he</p> <p>7 requested the payment to be made, did you say</p> <p>8 to him words to the effect, Jim, this loan is</p> <p>9 going to stay in default, what are you making</p> <p>10 the payment for, anything like that?</p> <p>11 A. No.</p> <p>12 Q. In fact, did you have the impression</p> <p>13 from him that he thought that the loan would</p> <p>14 be – the default would be cured by making the</p> <p>15 payment?</p> <p>16 MR. MORRIS: Objection to the form</p> <p>17 of the question.</p> <p>18 A. Did I get the impression from Jim</p> <p>19 Dondero that the loan would be cured if the</p> <p>20 payment from HCRE –</p> <p>21 Q. Yeah, if that is what he thought.</p> <p>22 MR. MORRIS: Objection to the form</p> <p>23 of the question.</p> <p>24 A. I didn't get any impression from him</p> <p>25 on that at the time.</p>
<p>Page 364</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Do you know whether there was an</p> <p>3 HCMS term loan that had a payment due in</p> <p>4 December of 2020?</p> <p>5 A. I don't recall.</p> <p>6 Q. Okay. And so the reason you don't</p> <p>7 recall whether or not there was a payment in</p> <p>8 January of 2021 is because you just don't</p> <p>9 remember whether there was such a loan at all?</p> <p>10 MR. MORRIS: Objection to the form</p> <p>11 of the question.</p> <p>12 A. I don't remember. There is – there</p> <p>13 is so many notes, and I mean, demands, and I</p> <p>14 don't – I don't remember. It's a lot to keep</p> <p>15 track in your head.</p> <p>16 Q. I understand, and – and I hear your</p> <p>17 frustration when you have explained that the</p> <p>18 debtor has your documents and you don't, and so</p> <p>19 I fully appreciate it, and this is no knock on</p> <p>20 you. It's a knock on somebody else on this</p> <p>21 call.</p> <p>22 MR. MORRIS: I move to strike. That</p> <p>23 was pretty obnoxious, but go ahead.</p> <p>24 Q. Okay. But so, Mr. Waterhouse, if –</p> <p>25 if a payment on the HCMS loan was made in</p>	<p>Page 365</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 January of 2021, do you think it was part of</p> <p>3 the same conversation where Jim Dondero said,</p> <p>4 hey, why didn't that get paid, please make</p> <p>5 that – get that payment done?</p> <p>6 MR. MORRIS: I object to the form of</p> <p>7 the question.</p> <p>8 A. Yes. Likely it would have been – I</p> <p>9 mean, again, I don't recall a payment being</p> <p>10 made, but, you know, again, I don't remember</p> <p>11 everything.</p> <p>12 Q. Okay. Did – at the time you were</p> <p>13 communicating with Kristin Hendrix about the</p> <p>14 payment being made, whichever payments were</p> <p>15 made in January, did she say anything to you</p> <p>16 about the payments not curing the loan</p> <p>17 defaults?</p> <p>18 A. No.</p> <p>19 Q. Okay. All right. So I'm going to</p> <p>20 take you back to very early in the deposition</p> <p>21 when Mr. Morris was asking you about the –</p> <p>22 the – the – the agreement with respect to</p> <p>23 the – the forgiveness element of the loans, so</p> <p>24 that is just to orient you.</p> <p>25 Do you remember that there was a</p>

<p>Page 366</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 time that you and Mr. Dondero were</p> <p>3 communicating about potential means of</p> <p>4 resolving the Highland bankruptcy by what was</p> <p>5 colloquially referred to as a pot plan?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And can you tell me generally</p> <p>8 when that was?</p> <p>9 A. Like mid -- mid 2020, sometime in</p> <p>10 2020, mid 2020.</p> <p>11 Q. Okay. And did the process of trying</p> <p>12 to figure out what the numbers should be</p> <p>13 involve looking at what one should pay for the</p> <p>14 Highland assets?</p> <p>15 MR. MORRIS: Objection to the form</p> <p>16 of the question.</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And did there come a time</p> <p>19 when you were proposing some potential numbers</p> <p>20 and Mr. Dondero said something to you like,</p> <p>21 well, why are you including payment for the</p> <p>22 related party notes, those, you know, were</p> <p>23 likely to be forgiven as part of my deferred</p> <p>24 executive compensation?</p> <p>25 MR. MORRIS: Objection to the form</p>	<p>Page 367</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 of the question.</p> <p>3 A. Yes, we did have that conversation.</p> <p>4 Q. Okay. Was that conversation in</p> <p>5 connection with trying to figure out the right</p> <p>6 numbers for a pot plan?</p> <p>7 A. Yeah. I mean, it was -- it was -- I</p> <p>8 mean, Jim -- Jim would ask for, you know,</p> <p>9 most -- most recent asset values, you know, for</p> <p>10 Highland, and -- and myself and the team</p> <p>11 provided those to him, so it was in that</p> <p>12 context.</p> <p>13 Q. Okay. And does that refresh your</p> <p>14 recollection that these communications were in</p> <p>15 2020 rather than 2021?</p> <p>16 MR. MORRIS: Objection to the form</p> <p>17 of the question.</p> <p>18 A. The -- the -- the executive</p> <p>19 compensation discussions were definitely in</p> <p>20 2020.</p> <p>21 Q. Okay. Now, did you ever make</p> <p>22 proposals that took into account Jim's comment</p> <p>23 that the notes were likely to end up forgiven</p> <p>24 as part of his compensation?</p> <p>25 MR. MORRIS: Objection to the form</p>
<p>Page 368</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 of the question.</p> <p>3 A. Yes, we -- the team and myself put</p> <p>4 together, you know, asset summaries of Highland</p> <p>5 at various times for all the assets of</p> <p>6 Highland, and not including the notes.</p> <p>7 Q. Okay. And were those presentations</p> <p>8 communicated to -- to Mr. Seery?</p> <p>9 A. No. Well, look, I didn't tell -- I</p> <p>10 didn't tell Mr. Seery. I don't know what</p> <p>11 Mr. Dondero did with the information.</p> <p>12 Q. Okay.</p> <p>13 A. I did not have conversations with</p> <p>14 Mr. Seery.</p> <p>15 Q. Okay. Do you know who saw the</p> <p>16 presentations that you put together that didn't</p> <p>17 include the value of the related party notes?</p> <p>18 A. We're talking presentations -- these</p> <p>19 are -- these are Excel spreadsheets?</p> <p>20 Q. Uh-huh.</p> <p>21 A. I don't know who -- these were given</p> <p>22 to -- to Jim Dondero. I don't know what was</p> <p>23 done with them after that.</p> <p>24 Q. Okay. You also mentioned earlier</p> <p>25 that sometime during your tenure at Highland</p>	<p>Page 369</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 you knew of the practice of giving forgivable</p> <p>3 loans to executives.</p> <p>4 MR. MORRIS: Objection to the form</p> <p>5 of the question.</p> <p>6 Q. Can you -- can you tell me what you</p> <p>7 recall about that practice?</p> <p>8 MR. MORRIS: Objection to the form</p> <p>9 of the question.</p> <p>10 A. Yes, so there were -- there were --</p> <p>11 during my tenure at Highland, there were loans</p> <p>12 or -- given to employees that were later</p> <p>13 forgiven at a future date and time.</p> <p>14 Q. Okay. And when the loans were</p> <p>15 given, did the notes, to your recollection, say</p> <p>16 anything about the potential forgiveness term?</p> <p>17 MR. MORRIS: Objection to the form</p> <p>18 of the question.</p> <p>19 A. When you say "did the notes," did</p> <p>20 the promissory notes detail the forgiveness?</p> <p>21 Q. Yes.</p> <p>22 A. Not that I recall.</p> <p>23 Q. And until such time as whatever was</p> <p>24 to trigger the forgiveness occurred, were the</p> <p>25 notes bona fide notes as far as you were</p>

<p>Page 370</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 concerned?</p> <p>3 MR. MORRIS: Objection to the form</p> <p>4 of the question.</p> <p>5 A. Yes, similar to – yes.</p> <p>6 Q. Okay. You were going to say similar</p> <p>7 to what?</p> <p>8 A. Mr. Morris earlier today showed</p> <p>9 notes of the financial statements about various</p> <p>10 affiliate loans. I – I – I do recall these</p> <p>11 notes because I – at that time personally</p> <p>12 worked on the – the financial statements of</p> <p>13 Highland. That was, you know, in my role as a</p> <p>14 corporate accountant.</p> <p>15 And there were – those loans</p> <p>16 were – to the partners were detailed in the</p> <p>17 notes to the financial statements, similar to</p> <p>18 what we went through earlier today in the prior</p> <p>19 testimony about what we saw with Highland</p> <p>20 and – and – and the – and HCMFA.</p> <p>21 Q. Is it fair to say that on Highland's</p> <p>22 balance sheet there were any number of assets</p> <p>23 that the value of which could be affected by</p> <p>24 subsequent events?</p> <p>25 MR. MORRIS: Objection to the form</p>	<p>Page 371</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 of the question.</p> <p>3 A. Yes. I mean, yes, that – there</p> <p>4 are. And that is – yes.</p> <p>5 Q. Okay. And is it typical accounting</p> <p>6 practice that until there is some certainty</p> <p>7 about those potential future events, that asset</p> <p>8 value listed on – on the books doesn't take</p> <p>9 into account those potential future events?</p> <p>10 MR. MORRIS: Objection to the form</p> <p>11 of the question.</p> <p>12 A. Yeah, if those – yes. If – if</p> <p>13 those future events, you know, at the time of</p> <p>14 issuance are not known or knowable, like I</p> <p>15 discussed earlier with, like, market practice,</p> <p>16 asset dislocation, or, you know, I mean, things</p> <p>17 like that, you – I mean, it – it could affect</p> <p>18 its fair value –</p> <p>19 Q. Okay.</p> <p>20 A. – in the future.</p> <p>21 Q. And am I correct you wouldn't feel</p> <p>22 compelled to footnote in every possible change</p> <p>23 in – in an asset when those possibilities are</p> <p>24 still remote?</p> <p>25 MR. MORRIS: Objection to the form</p>
<p>Page 372</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 of the question.</p> <p>3 A. The accounting standard is you have</p> <p>4 to estimate to the best – you know, to – to</p> <p>5 the best of your ability, the fair value of an</p> <p>6 asset as of the balance sheet date under –</p> <p>7 under GAAP.</p> <p>8 Q. Did – strike that.</p> <p>9 Okay. Give me a minute. I'm</p> <p>10 close – I'm close to done. Let me just go off</p> <p>11 and look at my notes for a second. So take two</p> <p>12 minutes.</p> <p>13 VIDEOGRAPHER: We're going off the</p> <p>14 record at 7:02 p.m.</p> <p>15 (Recess taken 7:02 p.m. to 7:03 p.m.)</p> <p>16 VIDEOGRAPHER: We are back on the</p> <p>17 record at 7:03 p.m.</p> <p>18 Q. Mr. Waterhouse, is it generally your</p> <p>19 understanding that people you work with now</p> <p>20 have been asking the debtor for full and</p> <p>21 unfettered access to their own former files?</p> <p>22 MR. MORRIS: Objection to the form</p> <p>23 of the question.</p> <p>24 A. Yes, I am – I am generally aware.</p> <p>25 Q. Okay. And do you think you could</p>	<p>Page 373</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 have been better prepared for this deposition</p> <p>3 if the debtor had complied with those requests?</p> <p>4 MR. MORRIS: Objection to the form</p> <p>5 of the question.</p> <p>6 A. I – I – I most certainly – yes.</p> <p>7 I mean, again, these are multiple years,</p> <p>8 multiple years ago, lots and lots of</p> <p>9 transactions.</p> <p>10 You know, we asked about NAV errors</p> <p>11 and, you know, things like that and these</p> <p>12 are – it would make this process a lot more –</p> <p>13 a lot easier and if we had – if we had access</p> <p>14 to that.</p> <p>15 Q. Okay. And has the debtor – is the</p> <p>16 debtor suing you right now?</p> <p>17 A. Yes.</p> <p>18 Q. And is the debtor trying to renege</p> <p>19 on deals that it had previously made with you?</p> <p>20 MR. MORRIS: Objection to the form</p> <p>21 of the question.</p> <p>22 A. Sorry, I need to – it is my</p> <p>23 understanding that the litigation trust is</p> <p>24 suing me. And not being a lawyer, I don't</p> <p>25 know – is that the debtor?</p>

<p>Page 374</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Is that – I don't know the</p> <p>3 relationship. So, again, I'm not the lawyers.</p> <p>4 I've said many times. But my understanding is</p> <p>5 the litigation trust is suing me. I could be</p> <p>6 wrong there. I don't know.</p> <p>7 Q. Okay. I understand.</p> <p>8 Someone with some connection to the</p> <p>9 Highland debtor has brought a claim against</p> <p>10 you; is that fair?</p> <p>11 MR. MORRIS: Objection to the form</p> <p>12 of the question.</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And is there also some motion</p> <p>15 practice in the bankruptcy where the debtor or</p> <p>16 someone associated with the debtor is</p> <p>17 attempting to undo something that was</p> <p>18 previously resolved with you?</p> <p>19 A. Yes.</p> <p>20 Q. And so in one action somebody is</p> <p>21 associated with the debtors trying to –</p> <p>22 threatening you with trying to take money from</p> <p>23 you, and then in the other – and trying to –</p> <p>24 and in the other they are threatening not to</p> <p>25 pay you things that had previously been agreed;</p>	<p>Page 375</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 is that correct?</p> <p>3 MR. MORRIS: Objection to the form</p> <p>4 of the question.</p> <p>5 A. I want to be – yes, I – there</p> <p>6 is – I'm being sued, again, on – on something</p> <p>7 that was agreed to with Mr. Seery and myself.</p> <p>8 I don't – I don't – I don't own that claim.</p> <p>9 Q. Okay.</p> <p>10 A. To be transparent, I don't own that</p> <p>11 claim. So it is not my personal property.</p> <p>12 Q. Okay.</p> <p>13 A. And – and being the nonlawyer, I</p> <p>14 don't know how I can get sued for something</p> <p>15 that I don't owe or, like, I don't own</p> <p>16 anything. I'm not the lawyer. But, I mean, if</p> <p>17 that is – if I'm understanding the facts</p> <p>18 correctly.</p> <p>19 Q. Okay. And the lawsuit that was</p> <p>20 filed that names you, that was just filed</p> <p>21 this – this past week; is that right?</p> <p>22 MS. DANDENEAU: Ms. Deitsch-Perez, I</p> <p>23 do want to interrupt at this point because</p> <p>24 just as I told Mr. Morris, that this is a</p> <p>25 deposition about the noticed litigation.</p>
<p>Page 376</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 I really don't want to go – go</p> <p>3 afield –</p> <p>4 MS. DEITSCH-PEREZ: Yeah.</p> <p>5 MS. DANDENEAU: – and open up a</p> <p>6 whole new line of inquiry about the lawsuit</p> <p>7 or the – the motion and the bankruptcy</p> <p>8 court. We will be here all night.</p> <p>9 MS. DEITSCH-PEREZ: And I</p> <p>10 understand.</p> <p>11 Q. My – my point is: Do you feel</p> <p>12 like – like there is some effort by these</p> <p>13 parties related to the debtor to intimidate</p> <p>14 you – not that you – I'm not saying you are</p> <p>15 or you aren't.</p> <p>16 But do you feel like there is some</p> <p>17 effort to intimidate you and maybe an effort to</p> <p>18 deter you from being as prepared as you might</p> <p>19 be in this deposition?</p> <p>20 MR. MORRIS: Objection to the form</p> <p>21 of the question.</p> <p>22 A. I was – I was surprised by the</p> <p>23 lawsuit, by me being named, because, again, I</p> <p>24 don't own the asset and things like that.</p> <p>25 Yeah, I just – I want to move forward with my</p>	<p>Page 377</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 life at Skyview.</p> <p>3 MS. DEITSCH-PEREZ: Thank you.</p> <p>4 THE WITNESS: Thank you.</p> <p>5 FURTHER EXAMINATION</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. If I may, I just have a few</p> <p>8 questions.</p> <p>9 Mr. Waterhouse, we saw a number of</p> <p>10 documents that Mr. Rukavina put up on the</p> <p>11 screen where Ms. Hendrix would send you a</p> <p>12 schedule of payments that were due on behalf of</p> <p>13 certain Highland affiliates.</p> <p>14 Do you remember that?</p> <p>15 A. Yes.</p> <p>16 Q. And in each instance she asked for</p> <p>17 your approval to make the payments; is that</p> <p>18 right?</p> <p>19 A. Yes, she did.</p> <p>20 Q. And was that the – was that the</p> <p>21 practice in the second half of 2020 whereby</p> <p>22 Ms. Hendrix would prepare a list of payments</p> <p>23 that were due on behalf of Highland associates</p> <p>24 and ask for approval?</p> <p>25 A. Yes.</p>

<p>Page 378</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. And I think you said that there was</p> <p>3 a – a –</p> <p>4 A. It was – I think I testified to</p> <p>5 this earlier when we talked about procedures</p> <p>6 and policy, you know, again, I want to be</p> <p>7 informed of – of – of – of – of any</p> <p>8 payments that are going out. I want to be made</p> <p>9 aware of these payments, and that was just a</p> <p>10 general policy, not just for 2020.</p> <p>11 Q. Okay. So it went beyond 2020?</p> <p>12 A. Yes.</p> <p>13 Q. Is that right?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And the corporate accounting</p> <p>16 group would prepare a calendar that would set</p> <p>17 forth all of the payments that were anticipated</p> <p>18 in the – in the three weeks ahead; is that</p> <p>19 right?</p> <p>20 A. I – like I testified earlier, we</p> <p>21 had a corporate calendar that was set up, you</p> <p>22 know, to – to provide reminders or, you know,</p> <p>23 of anything of any nature, whether it is</p> <p>24 payments or – or financial statements or, you</p> <p>25 know, whatever it is, you know, to meet</p>	<p>Page 379</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 deadlines.</p> <p>3 I don't know how, as I testified</p> <p>4 earlier, how much they were using that</p> <p>5 calendar.</p> <p>6 Q. Okay. But – but you did get notice</p> <p>7 and a request to approve the payments that were</p> <p>8 coming due on behalf of Highland's affiliates.</p> <p>9 Do I have that right?</p> <p>10 MS. DANDENEAU: Objection to form.</p> <p>11 A. I mean, generally, yes. I mean, you</p> <p>12 know, as we saw with these emails, generally, I</p> <p>13 mean, did that encompass everything, no.</p> <p>14 Q. Okay. Do you know why the</p> <p>15 payment – do you know why there was no payment</p> <p>16 made by NexPoint at the end of 2020?</p> <p>17 A. Yes. There was – there was – we</p> <p>18 talked about these agreements between the</p> <p>19 advisors and Highland, the shared services and</p> <p>20 the cost reimbursement agreement.</p> <p>21 And in late 2020, there were</p> <p>22 overpayments, large overpayments that had been</p> <p>23 made over the years on these agreements, and it</p> <p>24 was my understanding that the advisors were –</p> <p>25 were talking with – like Jim Seery and others</p>
<p>Page 380</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 to offset any obligations that the advisors</p> <p>3 owed to Highland as offset to the overpayments</p> <p>4 on these agreements.</p> <p>5 Q. Okay. Did you participate in any of</p> <p>6 those conversations?</p> <p>7 A. I did not.</p> <p>8 Q. Okay. Do you know – do you recall</p> <p>9 that the – at the end of November, the debtor</p> <p>10 did notice to the advisors of their intent to</p> <p>11 terminate the shared services agreements?</p> <p>12 A. Like I testified earlier, there</p> <p>13 was – the agreements weren't identical, from</p> <p>14 what I recall, and there is one that had a</p> <p>15 longer notice period, which I think had a</p> <p>16 60-day notice period. I don't recall which one</p> <p>17 that was, so not all of them were – notice</p> <p>18 hadn't been given as of November 30th, for all</p> <p>19 of the agreements.</p> <p>20 Q. Upon the receipt of the – the</p> <p>21 termination notices that you recall, do you</p> <p>22 know if the advisors decided at that point not</p> <p>23 to make any further payments of any kind to</p> <p>24 Highland?</p> <p>25 MR. RUKAVINA: Objection, form.</p>	<p>Page 381</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. No. The advisors – the advisors</p> <p>3 had stopped making payments prior to that</p> <p>4 notice.</p> <p>5 Q. Okay. And how do you know that the</p> <p>6 advisors stopped making – making payments</p> <p>7 prior to the notice?</p> <p>8 A. I had – I had a conversation</p> <p>9 with – with Jim Dondero.</p> <p>10 Q. And did Mr. Dondero tell you that</p> <p>11 the advisors would no longer make payments to</p> <p>12 Highland?</p> <p>13 MS. DEITSCH-PEREZ: Objection to the</p> <p>14 form.</p> <p>15 A. Yes, he – he – again, he said</p> <p>16 they – they – the advisors have overpaid on</p> <p>17 these agreements, to not make any future</p> <p>18 payments, and that there needs to be offsets,</p> <p>19 and they're working on getting offsets to these</p> <p>20 overpayment.</p> <p>21 Q. Do you know if anybody ever</p> <p>22 instructed Highland's employees to make the</p> <p>23 payment that was due by NexPoint at the end of</p> <p>24 the year?</p> <p>25 A. Did anyone instruct Highland's</p>

<p>Page 382</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 employees to make that payment?</p> <p>3 Q. Correct.</p> <p>4 A. Anyone – not that I'm aware.</p> <p>5 Q. Were any of Highland's employees</p> <p>6 authorized to make the payments on behalf of</p> <p>7 its affiliates – withdrawn.</p> <p>8 Was any of Highland's employees</p> <p>9 authorized to effectuate the payment on behalf</p> <p>10 of NexPoint that was due at the end of the year</p> <p>11 without getting approval from either you or</p> <p>12 Mr. Dondero?</p> <p>13 A. They had the – they had the ability</p> <p>14 to make the payment, but they didn't – you</p> <p>15 know, that – that payment needed to be</p> <p>16 approved.</p> <p>17 Q. Okay. And it needed to be approved</p> <p>18 by you or Mr. Dondero; is that right?</p> <p>19 A. I mean, I'm not going to make the</p> <p>20 unilateral decision.</p> <p>21 Q. Is that a decision that you</p> <p>22 understood had to be made by Mr. Dondero?</p> <p>23 A. Yes. Sitting back in December of</p> <p>24 2020, the – that – there was this off –</p> <p>25 offset negotiation that – that was happening,</p>	<p>Page 383</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 so I mean, until those negotiations were</p> <p>3 resolved, you know, there wasn't any</p> <p>4 payments – there weren't any payments.</p> <p>5 Q. And – and there were no payments</p> <p>6 until the negotiations were resolved because</p> <p>7 that was the directive that you received from</p> <p>8 Mr. Dondero; correct?</p> <p>9 A. I don't think he said – I mean, I</p> <p>10 think – yeah, I mean – I'm trying to recall</p> <p>11 the conversation. It was – you know, there</p> <p>12 is – there is these negotiations. There's –</p> <p>13 there needs to be these offsets. They're</p> <p>14 talking with the debtor. So, you know, until</p> <p>15 this is resolved, right, I mean, depending on</p> <p>16 how, whatever that resolution was, were we to</p> <p>17 take any action.</p> <p>18 Q. Okay. How about with respect to</p> <p>19 HCMS, did HCMS have a term payment due at the</p> <p>20 end of the year?</p> <p>21 A. Again, I don't – I don't recall.</p> <p>22 Q. Okay. You discussed briefly two</p> <p>23 payments that were made in January of 2021, one</p> <p>24 on behalf of NexPoint, and one on behalf of</p> <p>25 HCMS. Do I have that right?</p>
<p>Page 384</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. No. The two payments I recall were</p> <p>3 NexPoint and HCRE.</p> <p>4 Q. Okay. And those two payments –</p> <p>5 thank you for the correction. And those two</p> <p>6 payments were made because Mr. Dondero</p> <p>7 authorized those payments to be made; correct?</p> <p>8 A. Yes.</p> <p>9 Q. And they hadn't been made before</p> <p>10 that because Mr. Dondero had not authorized</p> <p>11 them to be made?</p> <p>12 MS. DEITSCH-PEREZ: Object to the</p> <p>13 form.</p> <p>14 A. Yes, because of these negotiations.</p> <p>15 Q. Okay. Just a couple of more</p> <p>16 questions.</p> <p>17 Did anybody, to the best of your</p> <p>18 knowledge, on behalf of HCMFA, ever tell the</p> <p>19 SEC that HCMLP was responsible for the mistakes</p> <p>20 that were made on the TerreStar valuation?</p> <p>21 A. Did anyone from Highland on HCMFA's</p> <p>22 behalf tell the SEC that Highland – that</p> <p>23 Highland was responsible for there – I just</p> <p>24 want to make sure –</p> <p>25 Q. It was a little bit different, so</p>	<p>Page 385</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 let me try again.</p> <p>3 A. These are very long questions, John.</p> <p>4 I'm not trying to be –</p> <p>5 Q. That is good. Do you know whether</p> <p>6 anybody – do you know whether anybody on</p> <p>7 behalf of HCMS – HCMFA ever told the SEC that</p> <p>8 Highland was the responsible party for the</p> <p>9 TerreStar valuation error?</p> <p>10 A. Not that I'm aware.</p> <p>11 Q. Okay. Did anybody on behalf of</p> <p>12 the – on behalf of HCMFA ever tell the retail</p> <p>13 board that Highland was responsible for the</p> <p>14 TerreStar valuation error?</p> <p>15 A. Not that I'm aware.</p> <p>16 Q. Do you know if HCMFA made an</p> <p>17 insurance claim with respect to the damages</p> <p>18 that were incurred in relation to the TerreStar</p> <p>19 valuation error?</p> <p>20 A. Yes.</p> <p>21 Q. And do you know why they made that</p> <p>22 insurance claim?</p> <p>23 A. Because there was an error. I</p> <p>24 mean –</p> <p>25 Q. Was the insured's claim made – was</p>

<p>Page 386</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 the insurance claim made under HCMFA's policy?</p> <p>3 A. Yes.</p> <p>4 Q. Did HCMFA at any time prior to the</p> <p>5 petition date – withdrawn.</p> <p>6 You were asked a couple of questions</p> <p>7 where – where you said that Mr. Dondero told</p> <p>8 you that he was ascribing zero value to the</p> <p>9 notes as part of a pot plan because he believed</p> <p>10 that the notes were part of executive</p> <p>11 compensation.</p> <p>12 Do I have that right?</p> <p>13 MS. DEITSCH-PEREZ: Object to the</p> <p>14 form.</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Have you ever heard that</p> <p>17 before the time that Mr. Dondero told you that</p> <p>18 in the conversation about the pot plan?</p> <p>19 A. Had I heard that prior to my</p> <p>20 conversation with Mr. Dondero?</p> <p>21 Q. Yes.</p> <p>22 A. No, I had not heard that prior.</p> <p>23 Q. Okay. And that was in the context</p> <p>24 of his formulation of the settlement proposal;</p> <p>25 is that right?</p>	<p>Page 387</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I mean, generally, yes. You know,</p> <p>3 we were asked to provide asset values, right,</p> <p>4 and he was having settlement discussions.</p> <p>5 Again, I don't know who those went to</p> <p>6 ultimately. I don't recall.</p> <p>7 MR. MORRIS: I have no further</p> <p>8 questions. Thank you very much for your</p> <p>9 patience. I apologize for the late hour.</p> <p>10 MS. DEITSCH-PEREZ: John, you stay</p> <p>11 on about your email when –</p> <p>12 MR. RUKAVINA: Hold on, I'm not</p> <p>13 done.</p> <p>14 MS. DEITSCH-PEREZ: Oh, okay. Davor</p> <p>15 still has questions. Sorry. I was going</p> <p>16 to say both John and Davor, could you stay</p> <p>17 on afterwards just to talk about the</p> <p>18 requests.</p> <p>19 FURTHER EXAMINATION</p> <p>20 BY MR. RUKAVINA:</p> <p>21 Q. Mr. Waterhouse, you were just now</p> <p>22 testifying about a discussion you had with</p> <p>23 Mr. Dondero where he said something like no</p> <p>24 more payments.</p> <p>25 Do you remember that testimony?</p>
<p>Page 388</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And was that late November or</p> <p>4 early December of 2020?</p> <p>5 A. It was, I would say, first or second</p> <p>6 week of November.</p> <p>7 Q. Okay. Do you recall whether –</p> <p>8 whenever you had that discussion, whether</p> <p>9 Mr. Dondero had already been fired by the</p> <p>10 debtor?</p> <p>11 A. Yes, I – I believe he was not an</p> <p>12 employee of the debtor anymore at that time.</p> <p>13 Q. And when you were discussing this</p> <p>14 with Mr. Dondero and he said no more payments,</p> <p>15 you were discussing the two shared services</p> <p>16 agreements and employee reimbursement</p> <p>17 agreements we testified – you testified about</p> <p>18 before; is that correct?</p> <p>19 MR. MORRIS: Objection to the form</p> <p>20 of the question.</p> <p>21 A. That is correct.</p> <p>22 Q. And had your office or you – and we</p> <p>23 will talk at a future deposition about the</p> <p>24 administrative claim.</p> <p>25 But had – by that time that you</p>	<p>Page 389</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 talked to Mr. Dondero, had your office or you</p> <p>3 done any estimate of what the alleged</p> <p>4 overpayments were?</p> <p>5 MR. MORRIS: Objection to the form</p> <p>6 of the question.</p> <p>7 A. Yes, we had – there was a – there</p> <p>8 was a detailed analysis that was put together</p> <p>9 by David Klos at the time.</p> <p>10 Q. And do you recall just generally</p> <p>11 what the total amount for both advisors of the</p> <p>12 overpayments was?</p> <p>13 A. It was in excess of \$10 million.</p> <p>14 Q. Was it in excess of \$14 million?</p> <p>15 MR. MORRIS: Objection to the form</p> <p>16 of the question.</p> <p>17 A. I – I remember it was an</p> <p>18 eight-figure number. I don't remember</p> <p>19 specifically.</p> <p>20 Q. Okay. And did you convey that</p> <p>21 number to Mr. Dondero when you had that</p> <p>22 conversation?</p> <p>23 A. Yes.</p> <p>24 Q. What was his reaction?</p> <p>25 A. I mean, he wasn't happy.</p>

<p style="text-align: right;">Page 390</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Is it fair to say he was upset?</p> <p>3 A. Yes.</p> <p>4 Q. Did Mr. Dondero ever expressly tell</p> <p>5 you to not have NexPoint make the required</p> <p>6 December 31, 2020, payment?</p> <p>7 A. Yes, I recall him saying don't make</p> <p>8 the payment because it was being negotiated, as</p> <p>9 I discussed with Mr. Morris, this offset</p> <p>10 concept. So there were obligations due by the</p> <p>11 advisors to Highland, they should be offset</p> <p>12 that – you know, those obligations should be</p> <p>13 offset by this – by this overpayment.</p> <p>14 Q. And when did he tell you that?</p> <p>15 A. I would say – I would say around –</p> <p>16 probably December – December-ish.</p> <p>17 Q. Early December, late December?</p> <p>18 A. I don't recall with as much</p> <p>19 specificity as – as – as – as stopping the</p> <p>20 shared services payments, because we had</p> <p>21 actually made one shared services payment in</p> <p>22 November. So that is why I need to remember</p> <p>23 that one more clearly. I don't remember where</p> <p>24 exactly in December that conversation occurred.</p> <p>25 Q. Did Mr. Dondero expressly use the</p>	<p style="text-align: right;">Page 391</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 word "NexPoint" when he was saying don't make</p> <p>3 these payments?</p> <p>4 MR. MORRIS: Objection to the form</p> <p>5 of the question, asked and answered.</p> <p>6 A. Yeah, we were – we were discussing</p> <p>7 advisor obligations. So it was – you know, it</p> <p>8 was just obligations from the advisors.</p> <p>9 And – and he specifically talked</p> <p>10 about the NexPoint payment as well.</p> <p>11 Q. Okay. And it is your testimony that</p> <p>12 he expressly told you not to make that NexPoint</p> <p>13 December 31 payment?</p> <p>14 MR. MORRIS: Objection, asked and</p> <p>15 answered twice.</p> <p>16 A. Yes, he – he did, during that</p> <p>17 conversation.</p> <p>18 Q. And did you ever follow up with him</p> <p>19 after that about whether NexPoint should or</p> <p>20 shouldn't make that payment?</p> <p>21 A. I did not.</p> <p>22 Q. Did you ever, on or about</p> <p>23 December 31, 2020, remind him and say, hey,</p> <p>24 this payment is due, what shall I – what</p> <p>25 should I do?</p>
<p style="text-align: right;">Page 392</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I did not.</p> <p>3 Q. So sitting here today, you – you</p> <p>4 remember distinctly that Dondero in December of</p> <p>5 2020 expressly told you not to have NexPoint</p> <p>6 make that payment?</p> <p>7 MR. MORRIS: Objection, asked and</p> <p>8 answered three times.</p> <p>9 A. Yes.</p> <p>10 Q. Can you say categorically it wasn't</p> <p>11 just some general discussion where he told you</p> <p>12 not to make payments?</p> <p>13 MR. MORRIS: Objection, asked and</p> <p>14 answer four times.</p> <p>15 MR. HORN: Four times now. Go for</p> <p>16 five.</p> <p>17 A. Yes.</p> <p>18 Q. Did you tell Mr. Seery that?</p> <p>19 A. I don't believe I did. I don't</p> <p>20 recall.</p> <p>21 Q. And was this an in-person discussion</p> <p>22 or telephone or email? Do you remember?</p> <p>23 A. This was a phone – a phone</p> <p>24 conversation.</p> <p>25 Q. Okay. Would you have a record of –</p>	<p style="text-align: right;">Page 393</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 on your cell phone of when that conversation</p> <p>3 might have taken place?</p> <p>4 I'm sorry, strike that.</p> <p>5 Was that by cell phone?</p> <p>6 A. I believe – yes, because we – I</p> <p>7 was at home. I mean, I don't have a landline.</p> <p>8 All I have is my cell phone.</p> <p>9 Q. Do you know whether your cell phone</p> <p>10 still has records of conversations from</p> <p>11 December 2020 on it?</p> <p>12 A. My call log doesn't go back that</p> <p>13 far.</p> <p>14 Q. Okay. Thank you.</p> <p>15 MR. RUKAVINA: I will pass the</p> <p>16 witness.</p> <p>17 MS. DEITSCH-PEREZ: Just a couple</p> <p>18 quick questions.</p> <p>19 FURTHER EXAMINATION</p> <p>20 BY MS. DEITSCH-PEREZ:</p> <p>21 Q. With respect to HCRE and HCMS, am I</p> <p>22 correct there was – there was no direction not</p> <p>23 to pay those loan payments?</p> <p>24 MR. MORRIS: Objection to the form</p> <p>25 of the question.</p>

<p>Page 394</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes, I don't recall having</p> <p>3 conversations about, you know, those – those</p> <p>4 entities.</p> <p>5 Q. And, in fact, what was the tone that</p> <p>6 Mr. Dondero had when he talked to you about the</p> <p>7 fact that HCRE and HCMS payments hadn't been</p> <p>8 made when he found out that they hadn't been</p> <p>9 paid?</p> <p>10 MS. DANDENEAU: Objection to form.</p> <p>11 MR. MORRIS: Objection to form.</p> <p>12 Q. What was the tone he took with you?</p> <p>13 A. Oh, it was – it was – it was – it</p> <p>14 was very negative. I mean, I think he cursed</p> <p>15 at me and he doesn't usually curse.</p> <p>16 Q. Okay. And in your mind, is that</p> <p>17 consistent with the fact that he was surprised</p> <p>18 that those payments hadn't been made?</p> <p>19 MR. MORRIS: Objection to the form</p> <p>20 of the question.</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Thank you.</p> <p>23 MR. MORRIS: I have nothing further.</p> <p>24 Thank you so much, Mr. Waterhouse.</p> <p>25 MR. HORN: I have no questions.</p>	<p>Page 395</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Thank you, Mr. Waterhouse. We appreciate</p> <p>3 your time. I am logging off the discussion</p> <p>4 and I will talk to y'all tomorrow.</p> <p>5 MR. MORRIS: Super.</p> <p>6 VIDEOGRAPHER: If there are no</p> <p>7 further questions, this ends the</p> <p>8 deposition – excuse me. This ends the</p> <p>9 deposition, and we are going off the record</p> <p>10 at 7:30 p.m.</p> <p>11 (Deposition concluded at 7:30 p.m.)</p> <p>12</p> <p>13</p> <p>14 _____</p> <p>15 FRANK WATERHOUSE</p> <p>16</p> <p>16 Subscribed and sworn to before me</p> <p>17 this day of 2021.</p> <p>18</p> <p>19 _____</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>Page 396</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 C E R T I F I C A T E</p> <p>3</p> <p>4 I, SUSAN S. KLINGER, a certified shorthand</p> <p>5 reporter within and for the State of Texas, do</p> <p>6 hereby certify:</p> <p>7 That FRANK WATERHOUSE, the witness whose</p> <p>8 deposition is hereinbefore set forth, was duly</p> <p>9 sworn by me and that such deposition is a true</p> <p>10 record of the testimony given by such witness.</p> <p>11 I further certify that I am not related to</p> <p>12 any of the parties to this action by blood or</p> <p>13 marriage; and that I am in no way interested in</p> <p>14 the outcome of this matter.</p> <p>15 IN WITNESS WHEREOF, I have hereunto set my</p> <p>16 hand this 19th of October, 2021.</p> <p>17</p> <p>18 _____</p> <p>19 Susan S. Klinger, RMR-CRR, CSR</p> <p>20 Texas CSR# 6531</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 397</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 NAME OF CASE: In re: Highland Capital</p> <p>3 DATE OF DEPOSITION: October 19, 2021</p> <p>4 NAME OF WITNESS: Frank Waterhouse</p> <p>5 Reason Codes:</p> <p>6 1. To clarify the record.</p> <p>7 2. To conform to the facts.</p> <p>8 3. To correct transcription errors.</p> <p>9 Page____Line____Reason_____</p> <p>10 From_____to_____</p> <p>11 Page____Line____Reason_____</p> <p>12 From_____to_____</p> <p>13 Page____Line____Reason_____</p> <p>14 From_____to_____</p> <p>15 Page____Line____Reason_____</p> <p>16 From_____to_____</p> <p>17 Page____Line____Reason_____</p> <p>18 From_____to_____</p> <p>19 Page____Line____Reason_____</p> <p>20 From_____to_____</p> <p>21 Page____Line____Reason_____</p> <p>22 From_____to_____</p> <p>23 Page____Line____Reason_____</p> <p>24 From_____to_____</p> <p>25</p>

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EXHIBIT 192

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:)Chapter 11
)
HIGHLAND CAPITAL MANAGEMENT, LP,)
)
Debtor.)Case No.
)
19-34054-SGJ-11)

HIGHLAND CAPITAL MANAGEMENT, LP,)
)
Plaintiff,)
)
vs.)Advisory Proceeding No.
)
21-03004)
NEXPOINT ADVISORS, LP; JAMES)
DONDERO; NANCY DONDERO; and THE)
DUGABOY INVESTMENT TRUST,)
)
Defendants.)

REMOTE DEPOSITION OF
DUSTIN NORRIS
December 1, 2021

DUSTIN NORRIS, produced as a witness at the
instance of the Highland Capital Management, was
duly sworn and deposed in the above-styled and
numbered cause on December 1, 2021, from
10:01 a.m. CST to 3:25 p.m. CST, stenographically
reported, pursuant to the Federal Rules of Civil
Procedure and the provisions stated on the record.

Job Number: 203362
Reported by: Rebecca A. Graziano, CSR, RMR, CRR
Texas CSR 9306
California CSR 14407
Illinois CSR 084.004659

<p>1 APPEARANCES</p> <p>2 (all attendees appearing via remote videoconference)</p> <p>3</p> <p>4 REPRESENTING HIGHLAND CAPITAL MANAGEMENT, LP:</p> <p>5 John Morris, Esq.</p> <p>6 Hayley Winograd, Esq.</p> <p>7 PACHULSKI STANG ZIEHL & JONES LLP</p> <p>8 780 Third Avenue</p> <p>9 New York City, New York 10017</p> <p>10 REPRESENTING NEXPOINT ADVISORS, LP:</p> <p>11 Davor Rukavina, Esq.</p> <p>12 MUNSCH HARDT KOPF & HARR, PC</p> <p>13 500 North Akard Street</p> <p>14 Dallas, Texas 75201</p> <p>15 REPRESENTING JAMES DONDERO, NANCY DONDERO, HCRE,</p> <p>16 and HCMS:</p> <p>17 Michael Aigen, Esq.</p> <p>18 STINSON LLP</p> <p>19 3102 Oak Lawn Avenue</p> <p>20 Dallas, Texas 75219</p> <p>21 ALSO PRESENT:</p> <p>22 La Asia Canty, Paralegal,</p> <p>23 Pachulski Stang Ziehl & Jones</p> <p>24</p> <p>25</p>	<p>Page 2</p> <p>1 INDEX</p> <p>2 PAGE</p> <p>3 EXAMINATION BY MR. MORRIS..... 5</p> <p>4</p> <p>5</p> <p>6 EXHIBITS</p> <p>7 NUMBER DESCRIPTION PAGE</p> <p>8 Exhibit 185 Plaintiff's Third Amended Notice of</p> <p>9 Rule 30(b)(6) Deposition to</p> <p>10 Highland Capital Management Fund</p> <p>11 Advisors..... 7</p> <p>12</p> <p>13</p> <p>14 PREVIOUSLY MARKED EXHIBITS</p> <p>15 NUMBER DESCRIPTION PAGE</p> <p>16 Exhibit 1 Complaint for (I) Breach of</p> <p>17 Contract and (II) Turnover of</p> <p>18 Property of the Debtor's Estate..... 38</p> <p>19 Exhibit 5 Defendant's Original Answer..... 29</p> <p>20 Exhibit 13 Defendant's Amended Answer..... 158</p> <p>21 Exhibit 36 Email Chain; Bates D-HCMFA290880</p> <p>22 through 290883..... 87</p> <p>23</p> <p>24</p> <p>25</p>
<p>1 PREVIOUSLY MARKED EXHIBITS</p> <p>2 NUMBER DESCRIPTION PAGE</p> <p>3 Exhibit 45 Highland Capital Management Fund</p> <p>4 Advisors, LP, Consolidated</p> <p>5 Financial Statements and</p> <p>6 Supplemental Information, 12/31/18;</p> <p>7 Bates D-CNL-002273 through 002296.... 46</p> <p>8 Exhibit 59 Supplemental 15(c) Info Request;</p> <p>9 Bates HCMFAS 000025 through 000031... 71</p> <p>10 Exhibit 147 BBVA Compass Bank Statement, Date</p> <p>11 Ending 5/31/19 (no Bates range)..... 51</p> <p>12 Exhibit 182 Memo Dated 5/28/19 (no Bates range).. 119</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 4</p> <p>1 PROCEEDINGS</p> <p>2 (On the record at 10:01 a.m. CST)</p> <p>3 (Witness duly sworn.)</p> <p>4 DUSTIN NORRIS,</p> <p>5 being first duly sworn, testified as follows:</p> <p>6 EXAMINATION</p> <p>7 BY MR. MORRIS:</p> <p>8 Q Good morning, Mr. Norris. As you may</p> <p>9 recall, my name is John Morris. I'm an attorney</p> <p>10 at Pachulski Stang Ziehl & Jones, and we're</p> <p>11 counsel to the reorganized debtor known as</p> <p>12 Highland Capital Management, LP, and we're here</p> <p>13 for your deposition today.</p> <p>14 Do you understand that?</p> <p>15 A Yes, sir.</p> <p>16 Q And do you understand that you're being</p> <p>17 deposed today in your capacity as what's called a</p> <p>18 Rule 30(b)(6) witness on behalf of Highland</p> <p>19 Capital Management Fund Advisors, LP?</p> <p>20 A I do.</p> <p>21 Q Can we refer to Highland Capital</p> <p>22 Management Fund Advisors, LP, as "HCMFA"?</p> <p>23 A Yes, that works.</p> <p>24 Q And can we refer to Highland Capital</p> <p>25 Management, LP, as either "Highland" or "HCMLP"?</p>
<p>Page 5</p>	<p>Page 5</p>

<p style="text-align: right;">Page 6</p> <p>1 Dustin Norris</p> <p>2 A Yes.</p> <p>3 Q Okay. Are you aware that your answers</p> <p>4 today will bind HCMFA?</p> <p>5 A Generally, yes.</p> <p>6 Q Okay. Have you seen the notice that was</p> <p>7 served by Highland on HCMFA in connection with</p> <p>8 this deposition?</p> <p>9 A I have.</p> <p>10 Q Okay. I've -- I've examined you before;</p> <p>11 right?</p> <p>12 A Yes.</p> <p>13 Q Okay. So the rules are the exact same,</p> <p>14 and they are very simple. If I ask a question, I</p> <p>15 would ask you to refrain from answering until I've</p> <p>16 completed my question; is that fair?</p> <p>17 A Yes, it is. Thank you.</p> <p>18 Q And if I begin a question or respond</p> <p>19 before you've completed your answer, will you let</p> <p>20 me know that?</p> <p>21 A Yes.</p> <p>22 Q We're going to be putting documents up on</p> <p>23 the screen from time to time today. If at any</p> <p>24 time you believe you need to see other portions of</p> <p>25 the document in order to give complete and</p>	<p style="text-align: right;">Page 7</p> <p>1 Dustin Norris</p> <p>2 accurate answers, will you let me know that?</p> <p>3 A Yes.</p> <p>4 Q If you need a break at any time, will you</p> <p>5 let me know that as well?</p> <p>6 A I will.</p> <p>7 Q Okay.</p> <p>8 MR. MORRIS: I would ask my</p> <p>9 colleague, Ms. Canty, to put up on the</p> <p>10 screen the Rule 30(b)(6) deposition</p> <p>11 notice.</p> <p>12 (Norris Exhibit 185 marked.)</p> <p>13 (Reporter discussion off the record.)</p> <p>14 MR. MORRIS: Okay. Asia, what</p> <p>15 exhibit number should we put on this</p> <p>16 document?</p> <p>17 MS. CANTY: 185.</p> <p>18 MR. MORRIS: Okay. Davor and</p> <p>19 Michael, this will be Exhibit 185.</p> <p>20 And if we can scroll down and show</p> <p>21 it to Mr. Norris.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q Do you see that this is the plaintiff's</p> <p>24 third amended notice of deposition for today?</p> <p>25 MR. RUKAVINA: And just so you</p>
<p style="text-align: right;">Page 8</p> <p>1 Dustin Norris</p> <p>2 know, John and Dustin, I did not send this</p> <p>3 to you, Dustin. All that it does is</p> <p>4 changes the time of today's deposition.</p> <p>5 It's identical to the last one that you</p> <p>6 did get.</p> <p>7 THE WITNESS: Okay. And I have the</p> <p>8 last one here with me as well.</p> <p>9 BY MR. MORRIS:</p> <p>10 Q Okay. So there's no -- I'll represent to</p> <p>11 you that there's no difference between the one</p> <p>12 that's on the screen and the one you have except</p> <p>13 that the one on the screen says "Third Amended</p> <p>14 Notice," and it was scheduled for 9:00 today.</p> <p>15 It's scheduled for 10:00 today, the -- the time</p> <p>16 that we're beginning.</p> <p>17 Do you have any other documents in</p> <p>18 front of you other than the deposition notice?</p> <p>19 A I do.</p> <p>20 Q What -- what other documents do you have</p> <p>21 before you?</p> <p>22 A Yeah. I have the original complaint I</p> <p>23 believe it's called -- forgive me if I call them</p> <p>24 the wrong items --</p> <p>25 Q Uh-huh.</p>	<p style="text-align: right;">Page 9</p> <p>1 Dustin Norris</p> <p>2 A -- but the original complaint from HCMLP.</p> <p>3 I have the original answer response from HCMFA. I</p> <p>4 have the amended response. I have the declaration</p> <p>5 from Mr. Sauter. I have copies of the promissory</p> <p>6 notes. I have the shared services agreement. I</p> <p>7 have a -- incumbency certificates, which will help</p> <p>8 me respond to one of your questions in the</p> <p>9 30(b)(6) notice. And I have a board to the</p> <p>10 memo [sic] regarding NAV error, and I have the</p> <p>11 "Defendant's Second Motion for Leave to Amend</p> <p>12 Answer and Brief in Support Thereof" that was</p> <p>13 filed yesterday.</p> <p>14 So a number of documents that -- and I</p> <p>15 also have up on my screen your exhibits that I</p> <p>16 believe we'll be going through in one of the --</p> <p>17 let me check here -- Topic Number 5. So I have</p> <p>18 open, you know, a 650-page document that was filed</p> <p>19 in Docket 35 on May 24th, I believe, is the</p> <p>20 correct document. So those are the materials that</p> <p>21 I have.</p> <p>22 Q Excellent. I appreciate that.</p> <p>23 So you've seen -- you've seen at least</p> <p>24 the plaintiff's second amended notice of</p> <p>25 Rule 30(b)(6) deposition before today. Do I have</p>

<p>Page 10</p> <p>1 Dustin Norris</p> <p>2 that right?</p> <p>3 A That's correct.</p> <p>4 Q And you have that with you; right?</p> <p>5 A I do.</p> <p>6 Q Okay. Are you prepared to testify on</p> <p>7 behalf of HCMFA today on – in connection with</p> <p>8 each of the topics in the deposition notice?</p> <p>9 A Yes, I am.</p> <p>10 Q All right.</p> <p>11 MR. MORRIS: Let's just, for the</p> <p>12 record, scroll down to make sure that the</p> <p>13 topics are the same as the – the one that</p> <p>14 Mr. Norris has in front of him.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q Do you see the first five topics on the</p> <p>17 screen?</p> <p>18 A I do.</p> <p>19 Q All right. Can you confirm that they're</p> <p>20 the same topics that you have in the second</p> <p>21 amended notice of deposition?</p> <p>22 A Yes. I'm looking now.</p> <p>23 Yes, they all are the same.</p> <p>24 Q Okay. And if we can continue to scroll</p> <p>25 down, you see Topics 6, 7, and 8 up on the screen,</p>	<p>Page 11</p> <p>1 Dustin Norris</p> <p>2 and 9. Are they the same as what you have?</p> <p>3 A Can you scroll down for 9?</p> <p>4 Q Uh-huh.</p> <p>5 A They look to be the same, yes.</p> <p>6 Q Okay. And let's just look at the last</p> <p>7 few. How about 10 through 14? Are they the same</p> <p>8 as the topics that are in your second amended</p> <p>9 notice?</p> <p>10 A They look to be the same, yes.</p> <p>11 Q Okay. And did you do anything to prepare</p> <p>12 for today's deposition?</p> <p>13 A I did.</p> <p>14 Q What did you do?</p> <p>15 A I reviewed all of the pleadings. I</p> <p>16 reviewed all of the – the documents that were, I</p> <p>17 believe, responsive to – to help me to respond to</p> <p>18 this, look through your exhibits. I had met with</p> <p>19 Mr. Rukavina as counsel. I met and spoke with</p> <p>20 Mr. Dondero. I spoke with Jason Post.</p> <p>21 I spoke with – I reviewed my</p> <p>22 documents internally and emails, things that I</p> <p>23 might have had, confirmed with our IT group that</p> <p>24 they have provided all documents responsive to</p> <p>25 your discovery requests.</p>
<p>Page 12</p> <p>1 Dustin Norris</p> <p>2 I reviewed the depositions of</p> <p>3 Mr. Seery, of Frank Waterhouse, Dave Klos, and</p> <p>4 Kristin Hendrix. I met in person and by Zoom with</p> <p>5 Mr. Rukavina over the last few weeks, and – so</p> <p>6 that – that's the general – you know, there may</p> <p>7 have been other things, but that's the general</p> <p>8 overview of the things that I did –</p> <p>9 Q I appreciate –</p> <p>10 A – to understand the company's position.</p> <p>11 Q I appreciate that.</p> <p>12 So just focusing in on the people that</p> <p>13 you spoke with in connection with your</p> <p>14 preparation, one was Davor; right?</p> <p>15 A Correct.</p> <p>16 And I – I may have – I don't know if</p> <p>17 I said it or not, but DC Sauter as well I also</p> <p>18 spoke with.</p> <p>19 Q Okay. So the other people are DC Sauter,</p> <p>20 Jason Post, and Mr. Dondero. Do I have that</p> <p>21 right?</p> <p>22 A Correct.</p> <p>23 Q Did you speak with Frank Waterhouse at</p> <p>24 all?</p> <p>25 A No, I did not.</p>	<p>Page 13</p> <p>1 Dustin Norris</p> <p>2 Q Is there any particular reason you didn't</p> <p>3 speak with Mr. Waterhouse?</p> <p>4 A Yes.</p> <p>5 Q And what – why didn't you speak with</p> <p>6 Mr. Waterhouse?</p> <p>7 A My – my – yeah, sorry.</p> <p>8 My understanding is his counsel did</p> <p>9 not allow us to speak with him regarding this,</p> <p>10 because HCMLP had sued him for various things, and</p> <p>11 so we weren't allowed to talk with him.</p> <p>12 You'll – you'll note that DC, earlier</p> <p>13 on, had spoken to him. I believe that was back in</p> <p>14 April, if you look back and I'd refer you to</p> <p>15 Mr. Sauter's declaration. But in preparation for</p> <p>16 this, we did not speak with him. We needed to</p> <p>17 wait for his deposition based on his attorney's</p> <p>18 instructions.</p> <p>19 Q How many times did you speak with</p> <p>20 Mr. Dondero about today's deposition?</p> <p>21 A Multiple times over the last few weeks.</p> <p>22 Q And was Mr. Rukavina present for those</p> <p>23 discussions?</p> <p>24 A He was not.</p> <p>25 Q Can you tell me what you discussed with</p>

<p>Page 14</p> <p>1 Dustin Norris</p> <p>2 Mr. Dondero about today's deposition?</p> <p>3 A Yeah. Discussed with him general view of</p> <p>4 the company from his perspective. We discussed</p> <p>5 particularly around – and we'll get into more</p> <p>6 details on this – but around the purpose and</p> <p>7 transfer of cash, the seven-and-a-half million</p> <p>8 dollars. And I guess there were two transactions.</p> <p>9 Discussed with him what he remembered</p> <p>10 in discussions with Frank Waterhouse when he</p> <p>11 instructed him to transfer the cash, and any</p> <p>12 recollection he had regarding the notes or the –</p> <p>13 the – the promissory notes.</p> <p>14 And so those were the general topics.</p> <p>15 And we did talk about –</p> <p>16 Q Did Mr. –</p> <p>17 A Sorry. Go ahead.</p> <p>18 Q Yeah, I don't mean to step on your words.</p> <p>19 A No, no.</p> <p>20 We talked about the NAV error, we</p> <p>21 talked about responsibility for the NAV error and</p> <p>22 those aspects as well.</p> <p>23 Q Did – did Mr. Dondero tell you when he</p> <p>24 first learned of the existence of the notes?</p> <p>25 A No.</p>	<p>Page 15</p> <p>1 Dustin Norris</p> <p>2 Q Did you ask him in connection with your</p> <p>3 preparation for today's deposition?</p> <p>4 A What I did ask, I asked him – I said,</p> <p>5 "Did you tell Frank Waterhouse that there should</p> <p>6 be – that this should be a loan?"</p> <p>7 And his response was, "No, that I</p> <p>8 never told Frank it should be a loan, and Frank</p> <p>9 never asked if it should be a loan." And that the</p> <p>10 intent – and the reason for the transfer was</p> <p>11 compensation for the NAV error.</p> <p>12 And so that was – he did not know –</p> <p>13 and if I – if I remember correctly, looking at</p> <p>14 his deposition, I believe he did not know about</p> <p>15 the notes at that time and found out about them</p> <p>16 much later.</p> <p>17 Q I know, and I'm trying to understand from</p> <p>18 you if you can tell me, as HCMFA's 30(b)(6)</p> <p>19 representative, whether you can share with me when</p> <p>20 Mr. Dondero first learned of the existence of the</p> <p>21 notes.</p> <p>22 A It – it would have been – I believe, if</p> <p>23 my understanding is correct, it would have been</p> <p>24 after they were demanded.</p> <p>25 Q After they were?</p>
<p>Page 16</p> <p>1 Dustin Norris</p> <p>2 A Demanded.</p> <p>3 Q Okay. How about your conversations with</p> <p>4 Mr. Post? Did the subject of when he learned</p> <p>5 about the existence of the notes come up?</p> <p>6 A No. That was not – a discussion with</p> <p>7 Jason Post – Post – talking with Jason was more</p> <p>8 around the NAV error, the events surrounding the</p> <p>9 NAV error, facts and circumstances around the NAV</p> <p>10 error.</p> <p>11 Q Okay. And were your discussions with</p> <p>12 Mr. Sauter limited to the investigation that he</p> <p>13 undertook earlier this year that's reflected in</p> <p>14 his declaration?</p> <p>15 A I would say it's not limited to that.</p> <p>16 Q What other topics did you discuss with</p> <p>17 Mr. Sauter beyond the investigation that he</p> <p>18 undertook that's reflected in his declaration?</p> <p>19 MR. RUKAVINA: And I would just</p> <p>20 caution you, Dustin, that to the extent</p> <p>21 that you and Mr. Sauter discussed factual</p> <p>22 matters, that's fair game.</p> <p>23 But as far as if you discussed</p> <p>24 litigation strategy, that's not fair game.</p> <p>25 So be careful with your answer, please,</p>	<p>Page 17</p> <p>1 Dustin Norris</p> <p>2 and tell Mr. Morris what you can and can't</p> <p>3 answer.</p> <p>4 THE WITNESS: Yeah.</p> <p>5 So early on with Mr. Sauter,</p> <p>6 discussions were around if I had any</p> <p>7 knowledge of the note, if he had any</p> <p>8 knowledge of the note, trying to discover</p> <p>9 what the notes were, what they were</p> <p>10 related to, and neither of us had</p> <p>11 knowledge related to notes.</p> <p>12 And then discussions around more</p> <p>13 generally – I'm trying to think back.</p> <p>14 There were many discussions with</p> <p>15 Mr. Sauter on the topic.</p> <p>16 General facts and circumstances of</p> <p>17 what he was learning from his</p> <p>18 investigation in which – all of which I</p> <p>19 would refer you to his declaration.</p> <p>20 And then subsequent, talking with</p> <p>21 him regarding the – I'm trying to</p> <p>22 recollect the – the key components.</p> <p>23 But it was general overview of –</p> <p>24 of the notes and NAV error and the</p> <p>25 process. He wasn't here during much of</p>

<p>Page 18</p> <p>1 Dustin Norris</p> <p>2 that time period or involved, and so we</p> <p>3 were talking together based on what he was</p> <p>4 doing.</p> <p>5 BY MR. MORRIS:</p> <p>6 Q Who are you employed by today?</p> <p>7 A NexPoint Advisors.</p> <p>8 Q Do you hold any position or title with</p> <p>9 HCMFA?</p> <p>10 A I do.</p> <p>11 Q And what's your position or title with</p> <p>12 HCMFA?</p> <p>13 A Executive vice president is my officer</p> <p>14 role.</p> <p>15 Q And when did you become an officer of</p> <p>16 HCMFA?</p> <p>17 A So I – I was originally secretary – and</p> <p>18 I can't remember if I was assistant secretary, but</p> <p>19 I've been involved with HCMFA since 2012. I don't</p> <p>20 know if I was added as an assistant secretary at</p> <p>21 that time; but for many – for several years, I've</p> <p>22 been an officer of HCMFA.</p> <p>23 Q And you were an officer in 2018 and 2019;</p> <p>24 is that right?</p> <p>25 A Correct. I was secretary in 2018, and –</p>	<p>Page 19</p> <p>1 Dustin Norris</p> <p>2 I'm looking at the incumbency certificates here –</p> <p>3 and in 2019 in April became executive vice</p> <p>4 president. So from January to – January 2018 to</p> <p>5 April 2019, I was secretary and then became</p> <p>6 executive vice president.</p> <p>7 Q When did you first learn of the existence</p> <p>8 of the notes?</p> <p>9 A So it was after they were demanded, and it</p> <p>10 was – so I believe the demand came in in early</p> <p>11 2020 – 2021. So January-ish 2021.</p> <p>12 Q Do you have any role or any title with any</p> <p>13 of the funds that are managed by either NexPoint</p> <p>14 or HCMFA?</p> <p>15 A I do.</p> <p>16 Q Can you describe those roles or titles for</p> <p>17 me, please?</p> <p>18 A Yeah. I'm – I'm the executive vice</p> <p>19 president of the funds, and my role more broadly</p> <p>20 is I am the head of distribution and chief product</p> <p>21 strategist. And so in that role, I lead the sales</p> <p>22 and business development and marketing for the</p> <p>23 funds, more broadly.</p> <p>24 Q And what is your title with NexPoint</p> <p>25 Advisors, LP?</p>
<p>Page 20</p> <p>1 Dustin Norris</p> <p>2 A I am executive vice president in the</p> <p>3 officer capacity, and my role is – as an employee</p> <p>4 is head of distribution and chief product</p> <p>5 strategist.</p> <p>6 Q Okay. So just to summarize, you're the</p> <p>7 executive vice president of NexPoint Advisors, LP;</p> <p>8 correct?</p> <p>9 A Correct.</p> <p>10 Q And that's an officer position; correct?</p> <p>11 A It is.</p> <p>12 Q And when did you attain that title?</p> <p>13 A Probably – I don't have the incumbency</p> <p>14 certificates, but it was probably the same time as</p> <p>15 HCMFA.</p> <p>16 Q Is it fair to say that it was sometime</p> <p>17 before January 1st, 2018?</p> <p>18 A No.</p> <p>19 Q Can you give me an estimate of when that</p> <p>20 was? Feel free –</p> <p>21 A Yeah. The time – the timeline for HCMFA</p> <p>22 was April 2019. I was secretary before that, and</p> <p>23 I don't recall if NexPoint Advisors changed at the</p> <p>24 same time.</p> <p>25 Q Okay. Can I refer to HCMFA and NexPoint</p>	<p>Page 21</p> <p>1 Dustin Norris</p> <p>2 Advisors, LP, together as "the advisers"?</p> <p>3 A That's fine.</p> <p>4 Q Okay. So is it fair to say that you were</p> <p>5 the executive vice president, which was an officer</p> <p>6 position, for each of the advisers as of April</p> <p>7 2019?</p> <p>8 A Yes.</p> <p>9 Q Okay. And –</p> <p>10 A I believe that's correct.</p> <p>11 Q And you also serve as the executive vice</p> <p>12 president of the funds that each of the advisers</p> <p>13 manages. Do I have that right?</p> <p>14 A Yes. Currently.</p> <p>15 Q And have you held the –</p> <p>16 A Yes, currently.</p> <p>17 Q And when did you become the executive vice</p> <p>18 president of the funds?</p> <p>19 A I don't remember the exact date, if that</p> <p>20 was around the same time, but I was the secretary</p> <p>21 before that and assistant secretary before that,</p> <p>22 dating back to 2012.</p> <p>23 Q So you've been – is it fair to say that</p> <p>24 you've been an officer of the funds managed by the</p> <p>25 advisers since at least 2013?</p>

<p>Page 22</p> <p>1 Dustin Norris</p> <p>2 A I believe so. I'd have to go back and</p> <p>3 look for sure, but I believe. There may have been</p> <p>4 periods of time where I was not, but yes.</p> <p>5 Q Okay. Were any of those periods of time</p> <p>6 when you were not, at any point since 2018 to the</p> <p>7 present?</p> <p>8 A I don't believe so.</p> <p>9 Q Okay. So to the best of your</p> <p>10 recollection, you've served as an executive vice</p> <p>11 president of each of the funds managed by the</p> <p>12 advisers since at least the beginning of 2018; is</p> <p>13 that fair?</p> <p>14 A No. That's – that's different than my</p> <p>15 prior testimony that – I was secretary until</p> <p>16 April –</p> <p>17 Q I apologize. Let me restate the question.</p> <p>18 You've been an officer of – of the</p> <p>19 funds managed by the advisers on a continuous</p> <p>20 basis since at least the beginning of 2018; fair?</p> <p>21 A I believe that's correct, yes.</p> <p>22 Q Thank you for the question – for – for</p> <p>23 the correction.</p> <p>24 So as I think you pointed out earlier,</p> <p>25 one of the topics on the 30(b)(6) notice is the</p>	<p>Page 23</p> <p>1 Dustin Norris</p> <p>2 identity of officers, directors, and employees of</p> <p>3 HCMFA?</p> <p>4 A Uh-huh.</p> <p>5 Q Do you want to take a look at that topic</p> <p>6 on the document that you have in front of you?</p> <p>7 A Yes.</p> <p>8 Q Okay.</p> <p>9 A That is – which topic?</p> <p>10 Q 13.</p> <p>11 A 13, yes.</p> <p>12 Q Okay. So let's focus on 13 for a moment.</p> <p>13 Can you – can you identify for me</p> <p>14 HCMFA's officers from January 1st, 2018, to the</p> <p>15 present –</p> <p>16 A Yes.</p> <p>17 Q – including names and titles?</p> <p>18 A Yes.</p> <p>19 Q Okay.</p> <p>20 A So from January 1st, 2018 – and I don't</p> <p>21 have – I – I'm assuming that the dates that I</p> <p>22 have on the incumbency certificates are complete,</p> <p>23 but I'm not certain, and – if there was one in</p> <p>24 between, but I'm assuming this is – that the</p> <p>25 dates I have changing is – is effective when they</p>
<p>Page 24</p> <p>1 Dustin Norris</p> <p>2 changed.</p> <p>3 But Brad Ross was president of HCMFA</p> <p>4 from January 1st, 2018, until, I believe,</p> <p>5 February 2018 – sorry – yeah, until</p> <p>6 February 2018.</p> <p>7 In that same time period, Brad Ross,</p> <p>8 president; Trey Parker, executive vice president;</p> <p>9 Frank Waterhouse, treasurer; Dustin Norris,</p> <p>10 secretary.</p> <p>11 And effective 26th of February –</p> <p>12 Q I apologize. What is Mr. Parker's title?</p> <p>13 A Executive vice president.</p> <p>14 Q Thank you.</p> <p>15 A And beginning February 26th, 2018, Trey</p> <p>16 Parker, executive vice president; Frank</p> <p>17 Waterhouse, treasurer; and Dustin Norris,</p> <p>18 secretary; and no longer president, Brad Ross.</p> <p>19 There's no president on the lineup.</p> <p>20 So continuing on, April 11th, 2019,</p> <p>21 Dustin Norris, executive vice president; Frank</p> <p>22 Waterhouse, treasurer; Lauren Thedford, secretary.</p> <p>23 Q And Trey Parker was no longer an officer</p> <p>24 as of that time?</p> <p>25 A He was no longer an officer.</p>	<p>Page 25</p> <p>1 Dustin Norris</p> <p>2 Q Okay.</p> <p>3 A And February 18th, 2021, Dustin Norris,</p> <p>4 executive vice president; Frank Waterhouse,</p> <p>5 treasurer; Brian Mitts, assistant treasurer; David</p> <p>6 Willmore, secretary. So Lauren Thedford, no</p> <p>7 longer secretary.</p> <p>8 Q And have there been any changes since</p> <p>9 February 2021?</p> <p>10 A Yes. You have April 8, 2021, Dustin</p> <p>11 Norris, executive president; Frank Waterhouse,</p> <p>12 treasurer; Will Mabry, assistant treasurer; and</p> <p>13 Stephanie Vitiello, secretary.</p> <p>14 Again, I – I don't have – this is</p> <p>15 based on what was provided to me with effective</p> <p>16 dates. I don't know if there was any that were</p> <p>17 missing, if that's complete, but I – I believe</p> <p>18 those are accurate.</p> <p>19 Q Is it fair to say that you're relying on</p> <p>20 exclusively on the incumbency certificates to</p> <p>21 identify the officers of HCMFA since January 1st,</p> <p>22 2018?</p> <p>23 A For this purpose, yes.</p> <p>24 Q Do you have any other information that you</p> <p>25 can share with me regarding the identity of any</p>

<p>Page 26</p> <p>1 Dustin Norris</p> <p>2 officers of HCMFA since January 1st, 2018?</p> <p>3 A I don't, no.</p> <p>4 Q Okay. Can you identify for me HCMFA's</p> <p>5 direct and indirect owners since January 1st,</p> <p>6 2018?</p> <p>7 A I can, yes. Generally Jim Dondero and</p> <p>8 Mark Okada are the indirect owners through trusts.</p> <p>9 They own approximately two-thirds, Jim Dondero, a</p> <p>10 little less than a third, Mark Okada, with a</p> <p>11 general partner that is – that owns 1 percent.</p> <p>12 Q And who is the general partner?</p> <p>13 A It's a Strand entity that I believe is</p> <p>14 owned 100 percent by Mr. Dondero.</p> <p>15 Q So Mr. Dondero controls the general</p> <p>16 partner –</p> <p>17 A Right.</p> <p>18 Q – of HCMFA?</p> <p>19 A Correct, and owns approximately two-thirds</p> <p>20 of the equity.</p> <p>21 Q And is that a controlling interest to the</p> <p>22 best of your knowledge?</p> <p>23 A Yes, I believe so.</p> <p>24 Q Okay. Does HCMFA have any directors?</p> <p>25 A It does not. It has a sole director</p>	<p>Page 27</p> <p>1 Dustin Norris</p> <p>2 through the general partners. So HCMFA does</p> <p>3 not – Strand – whatever the Strand entity does,</p> <p>4 Jim Dondero is the sole director.</p> <p>5 Q Okay. And what about employees? Does</p> <p>6 HCMFA have any employees?</p> <p>7 A It does have some front-office employees,</p> <p>8 trading professionals.</p> <p>9 Q Are there any employees who perform any</p> <p>10 services other than trading services?</p> <p>11 A Trading in front-office investment</p> <p>12 analysts, portfolio managers, generally that's</p> <p>13 been the structure with HCMFA, is they held –</p> <p>14 they had employees that performed front-office</p> <p>15 functions, and we, as I believe you're aware,</p> <p>16 outsourced the back-office accounting, compliance,</p> <p>17 and legal services to Highland Capital Management,</p> <p>18 LP, during this time period.</p> <p>19 Q Let's go to Topic Number 12.</p> <p>20 A Okay.</p> <p>21 Q And Topic Number 12 asks for a witness who</p> <p>22 can testify as to all communications that HCMFA</p> <p>23 "made in the bankruptcy case concerning the notes,</p> <p>24 including any pleadings, court filing, or</p> <p>25 argument."</p>
<p>Page 28</p> <p>1 Dustin Norris</p> <p>2 Do you see that?</p> <p>3 A I do.</p> <p>4 Q Are you prepared to answer questions on</p> <p>5 that topic?</p> <p>6 A I am.</p> <p>7 Q All right. You're aware that obviously</p> <p>8 Highland has commenced an adversary proceeding</p> <p>9 against HCMFA to collect on two promissory notes;</p> <p>10 right?</p> <p>11 A I am, yes, and I believe this right here</p> <p>12 is the complaint filed January 22nd.</p> <p>13 Q Okay. And you're aware that the notes</p> <p>14 that are the subject of the lawsuit were dated</p> <p>15 May 2nd and May 3rd, 2019, respectively; right?</p> <p>16 A Sorry. Can you repeat that?</p> <p>17 Q You're aware that the notes that are the</p> <p>18 subject of the lawsuit are dated May 2nd and</p> <p>19 May 3rd, 2019, respectively; correct?</p> <p>20 A Yes. The notes that are attached to the</p> <p>21 complaint, May 2nd and May 3rd.</p> <p>22 Q Okay. And can we refer to those two</p> <p>23 notes – those two promissory notes for the rest</p> <p>24 of this deposition collectively as "the notes"?</p> <p>25 A Yes.</p>	<p>Page 29</p> <p>1 Dustin Norris</p> <p>2 Q Okay. And you're aware that after</p> <p>3 Highland commenced this action, HCMFA filed its</p> <p>4 original answer; correct?</p> <p>5 A That's correct.</p> <p>6 Q Okay. And Topic Number 1 on your list, in</p> <p>7 fact, is the answer, correct, the original answer?</p> <p>8 A That's correct. It's Topic Number 1.</p> <p>9 MR. MORRIS: Okay. Can we put</p> <p>10 Deposition Exhibit 5 up on the screen?</p> <p>11 We're going to look at the original</p> <p>12 answer.</p> <p>13 (Exhibit 5 tendered.)</p> <p>14 BY MR. MORRIS:</p> <p>15 Q And, again, feel free to let me know if</p> <p>16 there's any portion of this document that you need</p> <p>17 to see. But looking at the first page – and</p> <p>18 perhaps we can continue to scroll through it – is</p> <p>19 this the original answer that was filed on behalf</p> <p>20 of HCMFA on March 1st, 2021?</p> <p>21 A I'll take your representation that it is.</p> <p>22 It looks to be, yeah.</p> <p>23 Q Okay.</p> <p>24 A I was not involved in the filing of it,</p> <p>25 but...</p>

<p>Page 30</p> <p>1 Dustin Norris</p> <p>2 Q Okay. Is the copy that you have with you</p> <p>3 dated March 1st, 2021?</p> <p>4 A Yes, it is.</p> <p>5 Q And if you can turn to Page 6 of 7, does</p> <p>6 it appear to be the exact same as what appears on</p> <p>7 the screen, showing the March 1st, 2021, date?</p> <p>8 A It does.</p> <p>9 Q And do you refer to the March 1st, 2021,</p> <p>10 date, as "the answer date"?</p> <p>11 A Yes.</p> <p>12 Q Okay. HCMFA did not assert any</p> <p>13 affirmative defenses in this pleading; correct?</p> <p>14 A That's my understanding.</p> <p>15 Q Okay. And HCMFA had full access to you as</p> <p>16 of March 1st, 2021; correct?</p> <p>17 A Yes.</p> <p>18 Q And HCMFA had full access to Mr. Dondero</p> <p>19 as of March 1st, 2021; correct?</p> <p>20 A In the term "full access," they could have</p> <p>21 talked to him, yes.</p> <p>22 Q Right. And there was no restriction from</p> <p>23 the bankruptcy court or otherwise on HCMFA's</p> <p>24 ability to communicate with Mr. Dondero that you</p> <p>25 know of; correct?</p>	<p>Page 31</p> <p>1 Dustin Norris</p> <p>2 A None that I know of.</p> <p>3 Q And there was no restriction or limitation</p> <p>4 on HCMFA's ability to speak with you at or prior</p> <p>5 to March 1st, 2021; correct?</p> <p>6 A That's correct.</p> <p>7 Q How about Ms. Thedford? Are you aware of</p> <p>8 any restriction or limitation on HCMFA's ability</p> <p>9 to speak with her prior to March 1st, 2021?</p> <p>10 A Yes.</p> <p>11 Q Okay. And what restriction was that?</p> <p>12 A Yeah. So she was part of the Highland</p> <p>13 legal team. She was an employee of HCMLP. And</p> <p>14 during this time period, we had outsourced our</p> <p>15 legal and compliance functions to them. And if –</p> <p>16 I would refer you to Mr. Sauter's declaration and</p> <p>17 the attachments and schedules. There's a very</p> <p>18 strict direction from Mr. Seery that</p> <p>19 individuals – particularly on the legal team –</p> <p>20 could not work on anything that would be inimical</p> <p>21 to the debtor.</p> <p>22 Q Okay.</p> <p>23 A And so Ms. Thedford, on multiple</p> <p>24 occasions, told us she was unable to work on</p> <p>25 things, and that began back in fall of 2000 –</p>
<p>Page 32</p> <p>1 Dustin Norris</p> <p>2 fall of 2020 – late summer 2020, actually. And</p> <p>3 so she was not accessible for things like this.</p> <p>4 Q How about Mr. Post? Do you know who</p> <p>5 Mr. Post was employed by in 2018 and 2019?</p> <p>6 A 2018 and '19, he was employed by Highland</p> <p>7 Capital Management, LP.</p> <p>8 Q Do you know whether, in your conversations</p> <p>9 with him, does he have any personal knowledge</p> <p>10 regarding the NAV error?</p> <p>11 A Yes.</p> <p>12 Q Was he involved in any of the issues</p> <p>13 surrounding the NAV error?</p> <p>14 A He was knowledgeable – as he was</p> <p>15 chief – chief compliance officer of the retail</p> <p>16 advisers at that time, and interacted with the</p> <p>17 HCMLP employees and the board regarding the NAV</p> <p>18 error, he also – in your schedules, you'll notice</p> <p>19 in one of the memos, he participated in calls with</p> <p>20 the SEC, and so he was – he was involved in the</p> <p>21 process of the NAV error and understood and worked</p> <p>22 with the other HCMLP employees, which naturally</p> <p>23 they would. We had outsourced valuation services</p> <p>24 to HCMLP. We had outsourced legal and compliance</p> <p>25 to HCMLP, and as such, that was all part of what</p>	<p>Page 33</p> <p>1 Dustin Norris</p> <p>2 they were working on.</p> <p>3 Q Did – did – were there any restrictions</p> <p>4 or limitations on HCMFA's ability to speak with</p> <p>5 Mr. Post prior to March 1st, 2021?</p> <p>6 A So once – so Jason – one important</p> <p>7 component here is Jason Post did leave the debtor,</p> <p>8 and working with Mr. Seery, I believe, to then</p> <p>9 leave and become an employee of NexPoint Advisors,</p> <p>10 and that was at the request of our retail board,</p> <p>11 as there were restrictions on Mr. Post at that</p> <p>12 time.</p> <p>13 And as chief compliance officer of the</p> <p>14 funds, the board had become very uncomfortable</p> <p>15 that they had restrictions on Mr. Post. And so it</p> <p>16 was in everybody's interest to allow him to become</p> <p>17 an employee of NexPoint Advisors, and so that was</p> <p>18 late 2020, I believe. I don't know the exact</p> <p>19 date. And at that time, there were certain things</p> <p>20 that Jason was able to then help the adviser with,</p> <p>21 but there were still restrictions. And he had</p> <p>22 limited access to his prior data. He left the</p> <p>23 debtor, but he didn't have – I believe he had</p> <p>24 restrictions on what he could access in the</p> <p>25 information.</p>

<p>Page 34</p> <p>1 Dustin Norris</p> <p>2 Q Okay. But it is fair to say that between</p> <p>3 January 21st, 2021, the day that the complaint was</p> <p>4 filed, and March 1st, 2021, the date that HCMFA</p> <p>5 filed its original answer, HCMFA had complete and</p> <p>6 unfettered access to you, to Mr. Dondero, and</p> <p>7 Mr. Post; correct?</p> <p>8 A Again, the complete and unfettered access</p> <p>9 on the Jason Post aspect, they could have talked</p> <p>10 to him. I'm not sure if there were any other</p> <p>11 restrictions related to what he had or information</p> <p>12 he had or based on his prior role of the debtor,</p> <p>13 he was restricted on what he could or couldn't</p> <p>14 talk about, if he had any lease agreement. I'm</p> <p>15 not certain on that. But, yes, we could talk</p> <p>16 to – or HCMFA could talk to Mr. Post.</p> <p>17 Q Okay. And the topics that you just raised</p> <p>18 are speculation on your part; correct?</p> <p>19 A It is.</p> <p>20 Q You're not aware of any restriction of –</p> <p>21 you don't have any knowledge of any restriction or</p> <p>22 limitation placed on HCMFA in respect of its</p> <p>23 ability to communicate with Mr. Post between</p> <p>24 January 21st, 2021, and March 1st, 2021; correct?</p> <p>25 A Based on my personal knowledge, no. There</p>	<p>Page 35</p> <p>1 Dustin Norris</p> <p>2 could have been something, but –</p> <p>3 Q Okay. I'm just asking about your</p> <p>4 knowledge, not what could have been.</p> <p>5 All right. So we're going to use</p> <p>6 March 1st, 2021, as the answer date.</p> <p>7 Are you aware of any document that</p> <p>8 HCMFA filed with the bankruptcy court prior to the</p> <p>9 answer date that concerns or relates in any way to</p> <p>10 the notes?</p> <p>11 A I'm thinking if I'm aware.</p> <p>12 Not that I'm aware of.</p> <p>13 Q Are you aware – withdrawn.</p> <p>14 Do you know what a "pleading" is, if I</p> <p>15 use that phrase?</p> <p>16 A I believe so. These are the answers that</p> <p>17 we gave. The first answer, the amended answer,</p> <p>18 and the second amended answer, that – I believe</p> <p>19 those are the two pleadings. Is that correct?</p> <p>20 Q You know what? I think my first question</p> <p>21 was broad enough, because I just used the word</p> <p>22 "document," so I'm going to let that sit.</p> <p>23 Are you aware of any argument that</p> <p>24 anybody ever made on behalf of HCMFA prior to the</p> <p>25 answer date that concerned or related to any of</p>
<p>Page 36</p> <p>1 Dustin Norris</p> <p>2 the notes?</p> <p>3 A And you mean an argument to the Court?</p> <p>4 Q Yes.</p> <p>5 A Not that I'm aware of.</p> <p>6 Q Okay. Are you aware of any statement of</p> <p>7 any kind that was made to the bankruptcy court</p> <p>8 prior to the answer date that concerned or related</p> <p>9 in any way to the notes?</p> <p>10 A Not that I can remember. But there's</p> <p>11 obviously been a lot of documents with the Court,</p> <p>12 but not that I'm aware of.</p> <p>13 Q Right. But you – did you do anything to</p> <p>14 prepare yourself to answer questions on Topic 12?</p> <p>15 A Yes.</p> <p>16 Q And do you believe that you're able to</p> <p>17 competently answer my questions relating to</p> <p>18 Topic 12 as HCMFA's 30(b)(6) witness?</p> <p>19 A I am. But I guess in this regard you're</p> <p>20 asking to my knowledge. And so, I guess, that –</p> <p>21 are you asking my personal knowledge or as my</p> <p>22 knowledge as a representative of the company?</p> <p>23 Q All right. I appreciate that.</p> <p>24 I am only examining you today in your</p> <p>25 capacity as a 30(b)(6) witness.</p>	<p>Page 37</p> <p>1 Dustin Norris</p> <p>2 A Okay. That makes sense. Okay.</p> <p>3 Q And so if I use the phrase "you," just as</p> <p>4 we did in the deposition notice, I'm really</p> <p>5 referring to HCMFA; is that fair?</p> <p>6 A That's fair.</p> <p>7 Q Okay. So let me just ask the questions</p> <p>8 again with that clarification.</p> <p>9 Are you aware, in your capacity as the</p> <p>10 30(b)(6) witness today, of any document that was</p> <p>11 ever filed on behalf of HCMFA prior to the answer</p> <p>12 date that concerns or relates to the notes?</p> <p>13 A No.</p> <p>14 Q Are you aware, in your capacity as the</p> <p>15 HCMFA 30(b)(6) witness, of any argument that was</p> <p>16 ever made to the Court prior to the answer date</p> <p>17 that concerns or relates in any way to the notes?</p> <p>18 A No.</p> <p>19 Q Are you aware of – again, when I use the</p> <p>20 phrase "you," I'm referring to HCMFA, just to</p> <p>21 shorten these questions a little bit.</p> <p>22 Are you aware of any statement that</p> <p>23 was ever made on your behalf to the bankruptcy</p> <p>24 court prior to the answer date that concerns or</p> <p>25 relates in any way to the notes?</p>

<p>Page 38</p> <p>1 Dustin Norris</p> <p>2 A Not that I recall.</p> <p>3 Q Okay. When did HCMFA first learn of the</p> <p>4 existence of the notes?</p> <p>5 A So HCMFA's position is that they learned</p> <p>6 of them when they were demanded, or after they</p> <p>7 were demanded. I don't even know that when we</p> <p>8 received – or who they were sent to, but it was</p> <p>9 after they were demanded.</p> <p>10 Q Okay. And do you recall when they were</p> <p>11 demanded?</p> <p>12 A I don't have the exact date. If you could</p> <p>13 remind me or show a document, that might be</p> <p>14 helpful. I don't know if you have the demand, or</p> <p>15 if that's one of the documents, but I don't</p> <p>16 remember the specific date.</p> <p>17 MR. MORRIS: Can we put Exhibit 1</p> <p>18 up on the screen?</p> <p>19 It's actually the complaint – the</p> <p>20 original complaint, sir.</p> <p>21 (Exhibit 1 tendered.)</p> <p>22 BY MR. MORRIS:</p> <p>23 Q If you go to Exhibit 3, do you see there's</p> <p>24 a demand letter there?</p> <p>25 A Yes.</p>	<p>Page 39</p> <p>1 Dustin Norris</p> <p>2 Q And you've seen that before; right?</p> <p>3 A I have.</p> <p>4 Q Okay. And are you – do you see that it</p> <p>5 was sent to Mr. Waterhouse?</p> <p>6 A Yes.</p> <p>7 Q And Mr. Waterhouse was the treasurer of</p> <p>8 HCMFA on December 3rd, 2020; correct?</p> <p>9 A Correct.</p> <p>10 Q Okay. So is it fair to say that HCMFA</p> <p>11 knew of the existence of the notes on</p> <p>12 December 3rd, 2020?</p> <p>13 A It's safe to say that Frank Waterhouse</p> <p>14 received this. I'm not sure the date exactly</p> <p>15 when – when the company became aware. Frank,</p> <p>16 yes, is an officer. He's also – the irony here,</p> <p>17 he's CFO of the debtor who is demanding this, so</p> <p>18 he's demanding it from himself. I know it's</p> <p>19 coming from – from who is sending it, but at this</p> <p>20 time, I don't know when Mr. Dondero or other</p> <p>21 officers became aware of it. Sometime after</p> <p>22 December 3rd.</p> <p>23 Q Okay. Do you know if HCMFA ever responded</p> <p>24 to this demand letter prior to the time the</p> <p>25 complaint was filed on January 21st, 2021?</p>
<p>Page 40</p> <p>1 Dustin Norris</p> <p>2 A I don't believe they did.</p> <p>3 Q So it's fair to say that nobody on behalf</p> <p>4 of HCMFA ever told any representative of Highland</p> <p>5 that it was previously unaware of the existence of</p> <p>6 the notes?</p> <p>7 A Sorry. Can you repeat that one more time?</p> <p>8 Q HCMFA never responded to this letter prior</p> <p>9 to the commencement of the lawsuit; right?</p> <p>10 A Not to my knowledge, didn't respond to</p> <p>11 HCMLP on this.</p> <p>12 Q Is there a reason why they didn't reach</p> <p>13 out to Highland to let Highland know that it</p> <p>14 disputed the existence of these notes?</p> <p>15 A I don't know if there's a reason, but I do</p> <p>16 know, during this time period, you'll recall,</p> <p>17 December and January, leading up to the actual</p> <p>18 demand – or the initial complaint, there was a</p> <p>19 lot going on. We were almost in daily depositions</p> <p>20 and court hearings. There was a hearing</p> <p>21 injunction handed out against Jim. There was a</p> <p>22 restraining order. There – TRO. There were</p> <p>23 lawsuits against the advisers. And so there was a</p> <p>24 lot going on, and I think this was put back in the</p> <p>25 priority line.</p>	<p>Page 41</p> <p>1 Dustin Norris</p> <p>2 Again, all of the compliance and legal</p> <p>3 functions at this time, December 2020, were being</p> <p>4 outsourced to HCMLP, and we were told they were</p> <p>5 unable to help with anything that was inimical to</p> <p>6 the debtor. And so there were no employees of</p> <p>7 HCMFA that were legal compliance professionals,</p> <p>8 and so this – this was – I guess – this is my</p> <p>9 speculation – was put in the back of the line, or</p> <p>10 further back from the actual litigation that they</p> <p>11 were defending or working against the daily</p> <p>12 depositions and coordinating.</p> <p>13 Q Do you have any reason to believe, as you</p> <p>14 sit here right now, that Mr. Waterhouse did not</p> <p>15 receive this demand letter on or about</p> <p>16 December 3rd, 2020?</p> <p>17 A I don't know. I don't have any reason to</p> <p>18 believe that, but I don't know.</p> <p>19 Q Okay.</p> <p>20 A And I don't recall what he testified to in</p> <p>21 regard to receiving the demand, but we see here it</p> <p>22 was sent to him. We can assume it got sent to</p> <p>23 him.</p> <p>24 Q Okay. Let me ask the question again, and</p> <p>25 I would appreciate you listening carefully to my</p>

<p>Page 42</p> <p>1 Dustin Norris</p> <p>2 question.</p> <p>3 As HCMFA's 30(b)(6) witness today,</p> <p>4 does HCMFA contend that this letter was not</p> <p>5 received by Mr. Waterhouse on or about</p> <p>6 December 3rd, 2020?</p> <p>7 MR. RUKAVINA: Well, that's not our</p> <p>8 contention. We agree that it was received</p> <p>9 on or about that date.</p> <p>10 MR. MORRIS: Okay.</p> <p>11 THE WITNESS: Yeah. That's –</p> <p>12 yeah.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q Okay. HCMFA actually knew about the notes</p> <p>15 just weeks after they were signed; correct?</p> <p>16 MR. RUKAVINA: Objection; form.</p> <p>17 THE WITNESS: So the debtor</p> <p>18 employees who created the notes knew about</p> <p>19 them, but it was not knowledge of HCMFA.</p> <p>20 Those were all Highland Capital</p> <p>21 Management, LP, employees.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q So it's your testimony that HCMFA had no</p> <p>24 knowledge of the existence of the notes in</p> <p>25 June 2019; is that correct?</p>	<p>Page 43</p> <p>1 Dustin Norris</p> <p>2 A June 2019.</p> <p>3 Correct.</p> <p>4 Q As the executive vice president of HCMFA,</p> <p>5 have you ever reviewed HCMFA's audited financial</p> <p>6 statements?</p> <p>7 A I have not.</p> <p>8 Q Is there anybody on behalf of HCMFA who is</p> <p>9 charged with the responsibility of reading HCMFA's</p> <p>10 audited financial statements?</p> <p>11 A Yeah. We – again, the key here is we</p> <p>12 outsourced finance, accounting, back-office</p> <p>13 functions. It includes financial statement</p> <p>14 preparation. The treasurer of HCMFA is an HCMLP</p> <p>15 employee, Frank Waterhouse, at that time, and at</p> <p>16 all times that we're talking about. And so with</p> <p>17 we – and Frank is a professional, and his team</p> <p>18 are professionals, right? We outsource to an</p> <p>19 accounting group to prepare and oversee, work with</p> <p>20 the auditors in preparation of those financials.</p> <p>21 And so they were tasked with that. And we relied</p> <p>22 on them. And there was not a specialist during</p> <p>23 this time period that did that.</p> <p>24 Q Does Frank Waterhouse have any</p> <p>25 responsibility, as the treasurer of HCMFA, to make</p>
<p>Page 44</p> <p>1 Dustin Norris</p> <p>2 sure that HCMFA's audited financial statements are</p> <p>3 true, accurate, and reliable?</p> <p>4 A Him and his team, yeah. We actually –</p> <p>5 that's what we rely on them for.</p> <p>6 Q And did you rely on him not only in his</p> <p>7 capacity as an employee of Highland, but in his</p> <p>8 capacity as the treasurer of HCMFA?</p> <p>9 A Yeah, he was – let's take the first –</p> <p>10 as a – in his capacity under the shared services</p> <p>11 agreement, okay, doing accounting, books and</p> <p>12 records, audited – audit support, yes, we relied</p> <p>13 on him in that capacity. And he also, as an HCMLP</p> <p>14 employee, served as a treasurer of HCMFA. In that</p> <p>15 role, we would expect him to oversee the</p> <p>16 financials.</p> <p>17 MR. MORRIS: Okay. And move to</p> <p>18 strike.</p> <p>19 BY MR. MORRIS:</p> <p>20 Q And I'm going to ask you very</p> <p>21 specifically: As HCMFA's representative today,</p> <p>22 did Frank Waterhouse have a duty as the treasurer</p> <p>23 of HCMFA to make sure that HCMFA's audited</p> <p>24 financial statements were true and accurate?</p> <p>25 A That – very specific from the treasurer</p>	<p>Page 45</p> <p>1 Dustin Norris</p> <p>2 role, I would say the treasurer role was to</p> <p>3 oversee the financial aspects of the advisers.</p> <p>4 Q And was one of those aspects HCMFA's</p> <p>5 audited financial statements?</p> <p>6 A As – yeah. And he was – again, I'll</p> <p>7 reiterate, he was the CFO of Highland who was</p> <p>8 tasked with creating the financial statements for</p> <p>9 the advisers.</p> <p>10 MR. MORRIS: Okay. I'm again going</p> <p>11 to move to strike.</p> <p>12 BY MR. MORRIS:</p> <p>13 Q I'm not asking about his role as CFO of</p> <p>14 Highland. I'm limiting it strictly to his role as</p> <p>15 the treasurer of HCMFA.</p> <p>16 A And I don't have –</p> <p>17 Q Did Frank – let me ask my question.</p> <p>18 Is any officer of HCMFA responsible</p> <p>19 for making sure that HCMFA's audited financial</p> <p>20 statements are true and accurate?</p> <p>21 A I don't know, but I would assume – and I</p> <p>22 don't want to make assumptions here as the</p> <p>23 representative – but I would assume that the</p> <p>24 treasurer would have that role.</p> <p>25 Q Okay. And what is your assumption based</p>

<p>Page 46</p> <p>1 Dustin Norris</p> <p>2 on?</p> <p>3 A Based on the understanding of what a</p> <p>4 treasurer role would be. But I – I don't have</p> <p>5 any – I don't have any knowledge, I'm not</p> <p>6 representing that we have any roles and</p> <p>7 responsibilities or defined procedures that the</p> <p>8 treasurer does this, that, or the other.</p> <p>9 Q Okay. Have you – as you sit here right</p> <p>10 now, have you ever seen HCMFA's audited financial</p> <p>11 statements for the period ending December 31st,</p> <p>12 2018?</p> <p>13 A I saw them in the materials that were</p> <p>14 provided in your schedules, I believe.</p> <p>15 Q Okay. Let's –</p> <p>16 A That was the first time.</p> <p>17 Q Let's take a quick look at it.</p> <p>18 MR. MORRIS: If we could put up on</p> <p>19 the screen the document that's been marked</p> <p>20 Exhibit 45.</p> <p>21 (Exhibit 45 tendered.)</p> <p>22 BY MR. MORRIS:</p> <p>23 Q Okay. And do you see that this is the</p> <p>24 first page of HCMFA's audited financial statements</p> <p>25 for the period ending December 31st, 2018?</p>	<p>Page 47</p> <p>1 Dustin Norris</p> <p>2 A I do.</p> <p>3 MR. MORRIS: Okay. And if we could</p> <p>4 just scroll, I think, to the third page.</p> <p>5 BY MR. MORRIS:</p> <p>6 Q Do you see that it's signed by</p> <p>7 PricewaterhouseCoopers on June 3rd, 2019?</p> <p>8 A I see that the audit opinion is signed by</p> <p>9 them, yes.</p> <p>10 Q Correct. And – and you're aware that</p> <p>11 PricewaterhouseCoopers was the outside auditor</p> <p>12 retained by HCMFA to conduct the audit of HCMFA's</p> <p>13 financial statements; correct?</p> <p>14 A Given that they gave an opinion, yes.</p> <p>15 Q Okay. And you have no reason to believe</p> <p>16 that the document that's up on the screen is</p> <p>17 anything other than HCMFA's audited financial</p> <p>18 statements for the period ending December 31st,</p> <p>19 2018, do you?</p> <p>20 And we're happy – I'm happy to scroll</p> <p>21 through whatever you need to see.</p> <p>22 A Yeah. And there they're distinguishing –</p> <p>23 you have an audit opinion and having audited</p> <p>24 financials, I assume that you have all that is</p> <p>25 here. You showed me the first page of the</p>
<p>Page 48</p> <p>1 Dustin Norris</p> <p>2 financials, which –</p> <p>3 Q Yeah. Yeah. Let's –</p> <p>4 A So I'm assuming that's the –</p> <p>5 Q Let's scroll down just a little bit.</p> <p>6 You can see that the next page is</p> <p>7 HCMFA's balance sheet. Do you see that?</p> <p>8 A I do.</p> <p>9 Q Okay.</p> <p>10 MR. MORRIS: Can we go to</p> <p>11 "Subsequent Events"? I think it's</p> <p>12 Page 17.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q Have you seen this page of HCMFA's audited</p> <p>15 financial statements before?</p> <p>16 A Just in preparation for this.</p> <p>17 Q Do you understand that in the "Subsequent</p> <p>18 Events" section, the notes are described in the</p> <p>19 audited financial statements?</p> <p>20 A There is a reference to promissory notes</p> <p>21 in aggregate of \$7.4 million, yes.</p> <p>22 Q And those are the two notes that Highland</p> <p>23 is suing on; correct?</p> <p>24 A I would assume that's the case, because</p> <p>25 the dollar amounts line up. But I don't have the</p>	<p>Page 49</p> <p>1 Dustin Norris</p> <p>2 backup, but I would assume that's the case.</p> <p>3 Q And not only do the dollar amounts line</p> <p>4 up, but do you see that the statement in</p> <p>5 "Subsequent Events" specifically identifies the</p> <p>6 notes as having been issued in the year 2019?</p> <p>7 A Yes.</p> <p>8 Q And are you aware of any notes that</p> <p>9 anybody in the world contends were signed by HCMFA</p> <p>10 between January 1st, 2019, and June 3rd, 2019,</p> <p>11 other than the two notes that Highland is suing</p> <p>12 on?</p> <p>13 A No.</p> <p>14 Q Okay. So can you conclude, as HCMFA's</p> <p>15 30(b)(6) witness, that the notes that are</p> <p>16 described in the subsequent events are the very</p> <p>17 notes that are the subject of the pending lawsuit?</p> <p>18 A That appears to be the case.</p> <p>19 Q Okay. And so it's also fair to say, then,</p> <p>20 that HCMFA does not dispute that its own audited</p> <p>21 financial statements that were the subject of a</p> <p>22 June 3rd, 2019, opinion by PricewaterhouseCoopers</p> <p>23 disclosed the existence of the notes at issue;</p> <p>24 correct?</p> <p>25 A No. We don't dispute that that was</p>

<p>Page 50</p> <p>1 Dustin Norris</p> <p>2 included in the financial statements. You know,</p> <p>3 I – I think we're going to get into it in our</p> <p>4 affirmative defenses, but we dispute that the</p> <p>5 notes were actually valid notes, and we would say</p> <p>6 that this was an error. These should not have</p> <p>7 been included, but were included in good faith by</p> <p>8 the accounting team who thought that they were</p> <p>9 valid notes.</p> <p>10 Q Okay.</p> <p>11 A So –</p> <p>12 MR. MORRIS: I move to strike</p> <p>13 everything other than the first portion of</p> <p>14 your answer that was responsive to my</p> <p>15 question.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q HCMFA does not dispute that it received</p> <p>18 \$2.4 million from Highland on May 2nd, does it?</p> <p>19 A No.</p> <p>20 Q HCMFA does not dispute that it received</p> <p>21 \$5 million on May 3rd, 2019, does it?</p> <p>22 A No.</p> <p>23 Q Let's just confirm that, if we can.</p> <p>24 MR. MORRIS: Can we put on the</p> <p>25 screen a document that's been marked as</p>	<p>Page 51</p> <p>1 Dustin Norris</p> <p>2 Exhibit 147?</p> <p>3 (Exhibit 147 tendered.)</p> <p>4 BY MR. MORRIS:</p> <p>5 Q Okay. Do you see that this is – or at</p> <p>6 least this appears to be a bank account statement?</p> <p>7 A Yes. BBVA Compass is a bank, so I'll take</p> <p>8 your representation it's a statement.</p> <p>9 MR. MORRIS: All right. And if we</p> <p>10 can just scroll down.</p> <p>11 All right. Stop right there.</p> <p>12 BY MR. MORRIS:</p> <p>13 Q Do you see that there's a reference on</p> <p>14 May 2nd to a 2.4-million-dollar transfer?</p> <p>15 A I do.</p> <p>16 Q Okay. And is that consistent with your</p> <p>17 testimony just now that on May 2nd, Highland</p> <p>18 transferred \$2.4 million to HCMFA?</p> <p>19 A That's correct.</p> <p>20 Q And lower on the page, the statement shows</p> <p>21 a transfer of \$5 million on May 3rd; correct?</p> <p>22 A Yes.</p> <p>23 Q And that's the payment that HCMFA</p> <p>24 acknowledged – acknowledges receiving from</p> <p>25 Highland on that day; correct?</p>
<p>Page 52</p> <p>1 Dustin Norris</p> <p>2 A Is this HCMFA's bank statement or is this</p> <p>3 HCMLP's?</p> <p>4 Q No. It's HCMLP's.</p> <p>5 A Okay. It just says "Highland Capital</p> <p>6 Management," and I'm assuming it lines up – I'm</p> <p>7 assuming this is the transfer, but –</p> <p>8 Q Okay.</p> <p>9 A – I can't confirm an entity. But we're</p> <p>10 not denying that there was cash received those</p> <p>11 dates from HCMLP.</p> <p>12 Q Okay. And are you aware –</p> <p>13 MR. MORRIS: We can take this down</p> <p>14 now.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q Do you recall that Topic Number 10 asks</p> <p>17 for a witness who can testify about the accounting</p> <p>18 of these transfers?</p> <p>19 A Uh-huh. Yup.</p> <p>20 Q Are you prepared to testify on Topic</p> <p>21 Number 10?</p> <p>22 A Yes.</p> <p>23 Q Can you tell me how HCMFA accounted for</p> <p>24 these payments on its books and records?</p> <p>25 A I can, yeah.</p>	<p>Page 53</p> <p>1 Dustin Norris</p> <p>2 So my understanding of the company's</p> <p>3 position is that – and – and it may be helpful</p> <p>4 to provide some additional color leading up to the</p> <p>5 accounting. I don't know if we want to address</p> <p>6 that later in our affirmative defenses, if you</p> <p>7 have a preference there.</p> <p>8 Q I'd just like you to – maybe it's my</p> <p>9 question, but I just want you to focus on my</p> <p>10 question.</p> <p>11 A Uh-huh.</p> <p>12 Q And that is: First, do you know how HCMFA</p> <p>13 accounted for these two payments in its books and</p> <p>14 records?</p> <p>15 A Yeah. So the HCMLP employees who were</p> <p>16 tasked with creating books and records of the</p> <p>17 adviser, the accounting team recorded, we – we –</p> <p>18 our position is that is an incorrect recording of</p> <p>19 a payable to HCMLP. And so there was a payable</p> <p>20 booked on the balance sheet of HCMFA by the HCMLP</p> <p>21 accounting team.</p> <p>22 MR. MORRIS: Okay. I'm going to</p> <p>23 move to strike.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q I – I'd appreciate not having the</p>

<p>Page 54</p> <p>1 Dustin Norris</p> <p>2 commentary. Your counsel can ask those questions</p> <p>3 or if it's responsive to a question. I'm just</p> <p>4 asking a very simple question.</p> <p>5 A Yup.</p> <p>6 Q How – how did HCMFA record these payments</p> <p>7 on its books and records?</p> <p>8 A Yeah. My understanding is they recorded a</p> <p>9 payable to HCMFP, a liability.</p> <p>10 Q And do you know when HCMFA first</p> <p>11 discovered that the payments were booked on its</p> <p>12 books and records as a liability?</p> <p>13 A Our position is that that was revealed</p> <p>14 through after the – sorry – after the demand.</p> <p>15 And as we began to get additional information –</p> <p>16 particularly, and I would refer you to</p> <p>17 Mr. Sauter's declaration, our amended response,</p> <p>18 and our second amended response that was filed</p> <p>19 yesterday regarding each of those time periods.</p> <p>20 But it was after the demand we found out how it</p> <p>21 was booked.</p> <p>22 Q Okay. So just to simplify this: HCMFA's</p> <p>23 books and records recorded the transfers on</p> <p>24 May 2nd and May 3rd as liabilities from HCMFA to</p> <p>25 Highland; correct?</p>	<p>Page 55</p> <p>1 Dustin Norris</p> <p>2 A So my understanding is the audited</p> <p>3 financials recorded in a subsequent event – you</p> <p>4 showed me that – they recorded a subsequent</p> <p>5 event. The balance sheet as of 12/31/2018 wasn't</p> <p>6 amended because it was a subsequent event. But on</p> <p>7 their books and records at that time, or</p> <p>8 subsequent to that, they recorded a liability.</p> <p>9 Q And – and do you know if that liability</p> <p>10 was recorded contemporaneously in May of 2019?</p> <p>11 A I don't know.</p> <p>12 Q But it's – it's HCMFA's position that,</p> <p>13 notwithstanding the recording of the liability on</p> <p>14 its books and records, that HCMFA didn't learn of</p> <p>15 that fact until after the demand letter was sent</p> <p>16 in December of 2020.</p> <p>17 Do I have that right?</p> <p>18 A Correct.</p> <p>19 Q Okay. Have there been any changes in</p> <p>20 HCMFA's books and records since it learned of the</p> <p>21 promise – of the existence of the promise –</p> <p>22 withdrawn.</p> <p>23 Has – has HCMFA changed its books and</p> <p>24 records after learning that the payments were</p> <p>25 recorded as liabilities?</p>
<p>Page 56</p> <p>1 Dustin Norris</p> <p>2 A I'm not aware of how it's been treated</p> <p>3 since then.</p> <p>4 Q Okay.</p> <p>5 MR. RUKAVINA: And, John, no</p> <p>6 urgency, but find some time in the near</p> <p>7 future for the restroom break. The</p> <p>8 morning coffee is working its magic.</p> <p>9 MR. MORRIS: Happy to do it right</p> <p>10 now, Davor.</p> <p>11 THE WITNESS: I can use that, too.</p> <p>12 I'm almost through my water bottle.</p> <p>13 MR. MORRIS: All right. So, look,</p> <p>14 it's 12:05. Let's just come back at 12:15</p> <p>15 or 11:15.</p> <p>16 THE WITNESS: Thank you.</p> <p>17 MR. MORRIS: Thanks so much.</p> <p>18 (Recess from 11:05 a.m. to 11:16 a.m. CST)</p> <p>19 BY MR. MORRIS:</p> <p>20 Q To the best of your knowledge, has HCMFA</p> <p>21 ever changed its books and records in order to</p> <p>22 reverse the booking of the payments that were made</p> <p>23 by Highland in May from liabilities to something</p> <p>24 else?</p> <p>25 A I'm not aware of how the accounting</p>	<p>Page 57</p> <p>1 Dustin Norris</p> <p>2 entries have been done since then, but – yeah,</p> <p>3 I'm not aware.</p> <p>4 Q Okay. But you'll – you'll agree that the</p> <p>5 accounting for these two payments was among the</p> <p>6 30(b)(6) topics, correct, Number 11 – Number 10?</p> <p>7 A Yes.</p> <p>8 Q And as the 30(b)(6) witness for HCMFA, can</p> <p>9 you confirm that, to the best of your knowledge,</p> <p>10 those payments were booked as liabilities and the</p> <p>11 booking of those payments as – as liabilities has</p> <p>12 not changed?</p> <p>13 A To the best of my knowledge, they were</p> <p>14 booked as liabilities, and I don't know how they</p> <p>15 have been treated. There's not been a year-end</p> <p>16 audit for 2021, and I'm sure the accountants and</p> <p>17 auditors will determine based on current facts and</p> <p>18 circumstances how those will be reported.</p> <p>19 Q Okay. But as of today, you have no</p> <p>20 knowledge that the booking of those payments as</p> <p>21 liabilities has ever been changed; correct?</p> <p>22 A Those – there's no financial statements</p> <p>23 that are prepared, I believe, intra-year, during</p> <p>24 the year, for audited purposes. And so, you know,</p> <p>25 that – that would be, I'm sure, determined based</p>

<p>Page 58</p> <p>1 Dustin Norris</p> <p>2 on any audit needs.</p> <p>3 Q Does HCMFA maintain an accounts payable</p> <p>4 ledger?</p> <p>5 A I'm sure it does.</p> <p>6 Q Did you do anything to try to ascertain</p> <p>7 whether or not these notes appear as liabilities</p> <p>8 on the accounts payable ledger?</p> <p>9 A As current accounts payable ledger?</p> <p>10 Q Yeah.</p> <p>11 A No.</p> <p>12 Q Did you – other than the audited</p> <p>13 financial statements, did you take any steps to</p> <p>14 ascertain how these payments were recorded in</p> <p>15 HCMFA's books and records, or is – or is it only</p> <p>16 on the audited financial statements?</p> <p>17 A So at the time that they were recorded, we</p> <p>18 know they were recorded as liabilities on the</p> <p>19 books and records.</p> <p>20 Q And when you say that it was recorded as a</p> <p>21 liability in the books and records, where in the</p> <p>22 books and records was it recorded as a liability?</p> <p>23 A Meaning on the balance sheet?</p> <p>24 Q Okay. So the balance sheet is one place;</p> <p>25 is that right?</p>	<p>Page 59</p> <p>1 Dustin Norris</p> <p>2 A Yes. We record liabilities on the balance</p> <p>3 sheet.</p> <p>4 Q Okay. Did HCMFA complete its audit for</p> <p>5 2019?</p> <p>6 A I don't – not that I'm aware of. I don't</p> <p>7 believe they had an audit for 2019.</p> <p>8 Q Okay. Now, HCMFA contends that the</p> <p>9 payments were – should not have been booked as a</p> <p>10 loan because they were supposed to be compensation</p> <p>11 for the error that Highland made in connection</p> <p>12 with the NAV error; correct?</p> <p>13 A Correct.</p> <p>14 Q Okay. Did HCMFA ever issue an invoice or</p> <p>15 a bill of any kind to Highland?</p> <p>16 A Not that I'm aware of.</p> <p>17 Q Okay. Is there anything in HCMFA's books</p> <p>18 and records that reflects its position that the</p> <p>19 payments should not have been billed as</p> <p>20 liabilities, but they should have been billed as</p> <p>21 income?</p> <p>22 A As compensation?</p> <p>23 Q Yeah.</p> <p>24 A Yes.</p> <p>25 Anything in their records?</p>
<p>Page 60</p> <p>1 Dustin Norris</p> <p>2 Q Yes.</p> <p>3 A I – I would refer you to the testimony of</p> <p>4 Mr. Dondero and Mr. Waterhouse, who both testified</p> <p>5 to this; Mr. Dondero that it was compensation, and</p> <p>6 that Frank testified in his deposition that he</p> <p>7 don't – didn't remember Mr. Dondero saying it was</p> <p>8 a loan, and that Mr. Dondero told him to get the</p> <p>9 money from Highland. And so it's – it's – that</p> <p>10 is on the record and in the record.</p> <p>11 But in HCMFA's other records, we have</p> <p>12 the president of HCMLP, Jim Dondero, who made that</p> <p>13 transfer and has said that that is for</p> <p>14 compensation.</p> <p>15 So there is – but there is – I</p> <p>16 wouldn't – I would be surprised to see some kind</p> <p>17 of a settlement agreement or invoice with – to</p> <p>18 affiliates.</p> <p>19 MR. MORRIS: Okay. I move to</p> <p>20 strike.</p> <p>21 BY MR. MORRIS:</p> <p>22 Q And my answer – my question is really</p> <p>23 simple.</p> <p>24 Is there anything in HCMFA's books and</p> <p>25 records that reflects its position that these</p>	<p>Page 61</p> <p>1 Dustin Norris</p> <p>2 payments were supposed to be made as compensation</p> <p>3 rather than in the form of loans?</p> <p>4 A I – I would say that the pleadings are a</p> <p>5 part of our books and records now. I would say</p> <p>6 depositions. And within that, it is well</p> <p>7 documented.</p> <p>8 Q Okay. Let me ask a different question</p> <p>9 then.</p> <p>10 Remember we were using the answer date</p> <p>11 as being March 1st, 2021.</p> <p>12 A Correct.</p> <p>13 Q Is there anything in HCMFA's books and</p> <p>14 records that was created prior to March 1st, 2021,</p> <p>15 that corroborates HCMFA's position that the</p> <p>16 payments were intended to be compensation and not</p> <p>17 in the form of a loan?</p> <p>18 A Yeah, and I would, again, refer you to</p> <p>19 DC's – what do you call it – declaration. That</p> <p>20 prior to that, we didn't have access to – to,</p> <p>21 largely, our books and records as that was</p> <p>22 outsourced to Highland Capital Management, LP, and</p> <p>23 to their employees, legal, compliance, and</p> <p>24 accounting. So our position is we did not have</p> <p>25 anything at that point related to this agreement.</p>

<p>Page 62</p> <p>1 Dustin Norris</p> <p>2 MR. MORRIS: Okay. I move to</p> <p>3 strike.</p> <p>4 BY MR. MORRIS:</p> <p>5 Q And listen carefully to my question.</p> <p>6 Is HCMFA aware of anything that was</p> <p>7 created prior to the answer date that corroborates</p> <p>8 its position today that the payments were intended</p> <p>9 to be treated as compensation rather than a loan?</p> <p>10 A I – I think as far as books and records</p> <p>11 go, we have NAV error memos, we have communication</p> <p>12 with the SEC. Right?</p> <p>13 There's – there is a lot of</p> <p>14 information related to the services that were</p> <p>15 performed under the shared services agreement,</p> <p>16 were for valuation purposes that Highland had</p> <p>17 created and was responsible for the valuation</p> <p>18 process, and that is a host of documents that are</p> <p>19 in the record, yes.</p> <p>20 MR. MORRIS: Okay. I – I move to</p> <p>21 strike.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q I'm asking about accounting. Maybe it's</p> <p>24 my fault. Okay? I'll – I'll take responsibility</p> <p>25 for this. I'm asking as a matter of accounting.</p>	<p>Page 63</p> <p>1 Dustin Norris</p> <p>2 I'm still on 30(b)(6) Topic Number 10.</p> <p>3 Is there anything in HCMFA's books and</p> <p>4 records that was created before the answer date</p> <p>5 that shows that the payment should have been</p> <p>6 accounted for as compensation rather than as a</p> <p>7 loan?</p> <p>8 A As far as an accounting record, I wouldn't</p> <p>9 expect there to be, because the accountant</p> <p>10 function was outsourced to HCMLP, and – and I</p> <p>11 would refer you to our latest response and our</p> <p>12 amended response of – of what was discovered and</p> <p>13 found throughout the process here.</p> <p>14 The accountants recorded a liability</p> <p>15 and they thought it should be liability. And so,</p> <p>16 no, there wasn't anything, to my knowledge, prior</p> <p>17 to that that was in the accounting books and</p> <p>18 records. And I – you know, I'm not surprised</p> <p>19 there wasn't, because of the facts that you'll –</p> <p>20 you'll see in our amended answers.</p> <p>21 Q Okay. Do you know whether, if it was</p> <p>22 intended to be compensation, that HCMFA's income</p> <p>23 statement should have shown the inflow of the</p> <p>24 \$7.4 million?</p> <p>25 A I don't know how it would be reported for</p>
<p>Page 64</p> <p>1 Dustin Norris</p> <p>2 accounting purposes. I – I do have an accounting</p> <p>3 background, but I haven't done accounting in a</p> <p>4 long time, and I'm not an expert in adviser</p> <p>5 financial statements. So I would say I don't</p> <p>6 have – and I guess – I guess that – stepping</p> <p>7 back and answering on behalf of the company here,</p> <p>8 I don't have a knowledge of how that would be</p> <p>9 recorded for income statement purposes.</p> <p>10 Q Okay.</p> <p>11 A But it would – it would be compensation</p> <p>12 that would be reported –</p> <p>13 Q Okay.</p> <p>14 A – somewhere in the financial statements.</p> <p>15 Q So it's your testimony today, as HCMFA's</p> <p>16 30(b)(6) witness, that HCMFA was unaware that its</p> <p>17 audited financial statements disclosed these notes</p> <p>18 until after the lawsuit was commenced.</p> <p>19 Do I have that right?</p> <p>20 A That's correct.</p> <p>21 Q And it's your position today, as HCMFA's</p> <p>22 30(b)(6) witness, that HCMFA was unaware that the</p> <p>23 payments that were made by Highland were booked as</p> <p>24 liabilities until sometime after the lawsuit was</p> <p>25 commenced; correct?</p>	<p>Page 65</p> <p>1 Dustin Norris</p> <p>2 A Yes, that's correct. The accounting</p> <p>3 function was outsourced to HCMLP.</p> <p>4 Q Okay. And there's – was there anybody –</p> <p>5 was there any officer of HCMFA who had</p> <p>6 responsibility for reviewing HCMFA's balance</p> <p>7 sheet?</p> <p>8 A I believe I already answered this earlier.</p> <p>9 Q I actually asked the question on the</p> <p>10 audited financial statements.</p> <p>11 A Okay.</p> <p>12 Q Now I'm going to ask specifically. Is</p> <p>13 there anybody who served as an officer of HCMFA</p> <p>14 who had the responsibility of making sure that</p> <p>15 HCMFA's balance sheets were true and accurate?</p> <p>16 A Yes. So Frank Waterhouse and his team,</p> <p>17 Frank was the named treasurer of HCMFA, and his</p> <p>18 role at HCMLP, as a service provider, would have</p> <p>19 had that responsibility along with his team.</p> <p>20 Q Okay. Let's go to the next topic,</p> <p>21 Topic 11. Do you see Topic 11 refers to</p> <p>22 "communications in 2020 with any retail board –</p> <p>23 A Yes.</p> <p>24 Q – concerning the amounts due and owing to</p> <p>25 Highland"?</p>

<p>Page 66</p> <p>1 Dustin Norris</p> <p>2 A Yes, I do.</p> <p>3 Q Okay. HCMFA is a financial advisory firm;</p> <p>4 correct?</p> <p>5 A It is.</p> <p>6 Q And it provides advisory services to</p> <p>7 certain funds; correct?</p> <p>8 A It does.</p> <p>9 Q And those advisory services are provided</p> <p>10 pursuant to written agreements; correct?</p> <p>11 A They are.</p> <p>12 Q And those agreements are subject to annual</p> <p>13 review; correct?</p> <p>14 A They are.</p> <p>15 Q And those agreements the principal source</p> <p>16 of HCMFA's revenue?</p> <p>17 A Yes, I believe so.</p> <p>18 Q Okay. It's among the most important</p> <p>19 contracts HCMFA has; correct?</p> <p>20 A Yes.</p> <p>21 Q In fact, it's the reason for HCMFA's</p> <p>22 existence, is that fair, is to serve the funds?</p> <p>23 A Largely, yes.</p> <p>24 Q And the funds are managed by boards;</p> <p>25 correct?</p>	<p>Page 67</p> <p>1 Dustin Norris</p> <p>2 A Correct.</p> <p>3 Q And can we refer to the boards that manage</p> <p>4 the funds that are served by the advisers as "the</p> <p>5 retail board"?</p> <p>6 A Yes.</p> <p>7 Q Okay. Did you participate – are you</p> <p>8 aware that in the fall of 2020 the retail board</p> <p>9 conducted a review in connection with the</p> <p>10 determination as to whether or not to renew</p> <p>11 HCMFA's contracts?</p> <p>12 A I am aware, yes.</p> <p>13 Q Did you participate in that process?</p> <p>14 A I did, in some – in some parts, yes.</p> <p>15 Q What parts did you participate in?</p> <p>16 A Yeah, so I attended the board meetings in</p> <p>17 relation to – we call this the 15(c) analysis.</p> <p>18 And so it's Section 15(c) of the 1940 Act requires</p> <p>19 the board to determine and renew the contracts on</p> <p>20 an annual basis. And so they look at a number of</p> <p>21 factors. And there's, I believe, certain case law</p> <p>22 that dictates the things that they should look at:</p> <p>23 Quality of services, performance, fees.</p> <p>24 And so my aspect – the biggest part</p> <p>25 of my contribution is to talk about the</p>
<p>Page 68</p> <p>1 Dustin Norris</p> <p>2 performance of the funds, how they performed</p> <p>3 during the year. We hire an outside third party</p> <p>4 to come in and talk about performance and fees. I</p> <p>5 help provide insight, talk about – as I oversee</p> <p>6 the sales and business development of the firm, I</p> <p>7 talk about inflows and outflows, which help –</p> <p>8 helps impact the economies of scale funds. We</p> <p>9 have certain funds that are shrinking, some that</p> <p>10 are growing. So talking about future, talking</p> <p>11 about mergers, talking about different aspects of</p> <p>12 that.</p> <p>13 And so my – mine is more of the sales</p> <p>14 business development function and regarding the</p> <p>15 services. One of the things that we do as the</p> <p>16 adviser is we, again – they have to determine</p> <p>17 that the quality of services we're providing are</p> <p>18 sufficient, and so they have to get comfortable</p> <p>19 with the various functions.</p> <p>20 Q Okay. Who else on behalf of HCMFA</p> <p>21 participated in the 15(c) analysis that you've</p> <p>22 just described?</p> <p>23 A Yeah, so as – again, going back to the</p> <p>24 shared services agreement, I point you to the</p> <p>25 services that are provided by HCMLP. In large</p>	<p>Page 69</p> <p>1 Dustin Norris</p> <p>2 part, this process is managed and run by the HCMLP</p> <p>3 employees as part of that shared services. Legal</p> <p>4 and compliance help draft the memos. They are –</p> <p>5 Q And I'm going to interrupt you, and I</p> <p>6 really apologize for doing that. I'm not asking</p> <p>7 about HCMLP.</p> <p>8 A Yeah.</p> <p>9 Q These are – these are HCMFA's contracts;</p> <p>10 correct?</p> <p>11 A They are.</p> <p>12 Q And they're the most important contracts</p> <p>13 that HCMFA has; correct?</p> <p>14 A Correct.</p> <p>15 Q Okay. So who – which officers of HCMFA</p> <p>16 are involved in the 15(c) analysis?</p> <p>17 A Yeah, one – going back to – to clarify</p> <p>18 on your – you know, this is the most important</p> <p>19 thing, you know, that we have, it is, and as such</p> <p>20 we have – a lot of those functions, and to talk</p> <p>21 about HCMFA's role, we have front-office</p> <p>22 investment professionals who join those meetings</p> <p>23 to talk about the funds and performance. The</p> <p>24 aspects of the adviser that we provide and source</p> <p>25 is the management of the funds: The performance,</p>

<p>Page 70</p> <p>1 Dustin Norris</p> <p>2 the investment selection. And then we bring in</p> <p>3 HCMLP to provide the various other services. And</p> <p>4 so they are a huge part of that. To say that –</p> <p>5 yeah, it's not – they are legal, compliance,</p> <p>6 accounting, finance, back office, settlement.</p> <p>7 Those are all functions that they're providing.</p> <p>8 Q I know – I appreciate that they're</p> <p>9 functions that they play under the shared services</p> <p>10 agreement.</p> <p>11 A Yup.</p> <p>12 Q Let me – let me move on.</p> <p>13 A Okay. Go ahead.</p> <p>14 Q In October 2020, HCMFA informed the retail</p> <p>15 board that HCMFA was obligated to pay Highland the</p> <p>16 outstanding principal amount due under the notes;</p> <p>17 correct?</p> <p>18 MR. RUKAVINA: Objection; form.</p> <p>19 THE WITNESS: Yeah, the</p> <p>20 obligated – I would – sorry. Can you</p> <p>21 ask the question again?</p> <p>22 BY MR. MORRIS:</p> <p>23 Q Sure.</p> <p>24 In October 2020, HCMFA informed the</p> <p>25 retail board of the existence of the notes;</p>	<p>Page 71</p> <p>1 Dustin Norris</p> <p>2 correct?</p> <p>3 A Not that I'm aware of. If you have</p> <p>4 something you could – you know, a document or</p> <p>5 something that you're thinking of?</p> <p>6 Q So you participated in the 15(c) process,</p> <p>7 and you have no knowledge of HCMFA informing the</p> <p>8 retail board of the existence of the notes?</p> <p>9 A Of these notes? No. And I would say that</p> <p>10 there was a question from the retail board posed</p> <p>11 to the advisers, which we passed along to HCMLP,</p> <p>12 which included Lauren Thedford as an HCMLP</p> <p>13 employee and Frank Waterhouse, is: Were there any</p> <p>14 liabilities to – owed to Highland?</p> <p>15 Q So let's take a look – I'm sorry. Go</p> <p>16 ahead.</p> <p>17 A No, go ahead.</p> <p>18 Q I was going to say, let's take a look at</p> <p>19 that.</p> <p>20 MR. MORRIS: So if we could put up</p> <p>21 on the screen Exhibit 59.</p> <p>22 (Exhibit 59 tendered.)</p> <p>23 BY MR. MORRIS:</p> <p>24 Q Have you seen this document before, sir?</p> <p>25 A I have.</p>
<p>Page 72</p> <p>1 Dustin Norris</p> <p>2 Q And this is the report that the advisers</p> <p>3 gave to the retail board in October 2020 as part</p> <p>4 of the 15(c) analysis; correct?</p> <p>5 A Yes, working closely with HCMLP in the</p> <p>6 accounting, compliance, and legal function did</p> <p>7 draft this.</p> <p>8 Q Okay. And who – who on behalf of the</p> <p>9 advisers authorized the sending of this memo?</p> <p>10 A I don't know that there's a formal</p> <p>11 authorization. Lauren Thedford, who was the</p> <p>12 secretary of the advisers and an HCMLP employee,</p> <p>13 helped prepare the memo along with the rest of the</p> <p>14 legal and compliance team. Thomas Sargent was</p> <p>15 probably involved.</p> <p>16 MR. MORRIS: Okay. I'm going to</p> <p>17 move to strike.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q I don't want to know who was probably</p> <p>20 involved. I actually asked a very specific</p> <p>21 question, and if you don't know, please just say</p> <p>22 you don't know.</p> <p>23 Who on behalf of the advisers</p> <p>24 authorized the sending of this memo to the retail</p> <p>25 board?</p>	<p>Page 73</p> <p>1 Dustin Norris</p> <p>2 A I don't know.</p> <p>3 Q Did anybody on behalf of the advisers ever</p> <p>4 suggest that this memo was wrong or inaccurate in</p> <p>5 any way to the best of your knowledge?</p> <p>6 A At that time? Is that what you mean?</p> <p>7 Q Yes.</p> <p>8 A No, not – not to my knowledge.</p> <p>9 Q Okay. When did you see this memo for the</p> <p>10 first time?</p> <p>11 A I may have been copied on it at the time.</p> <p>12 I don't remember if I read it, but I did review</p> <p>13 it – and actually, I didn't review the whole</p> <p>14 memo. I reviewed the one email that was related</p> <p>15 to the note payable in this. So I don't know that</p> <p>16 I read the whole memo.</p> <p>17 Q So – so –</p> <p>18 MR. MORRIS: Can we see how long</p> <p>19 the memo is?</p> <p>20 BY MR. MORRIS:</p> <p>21 Q So it's two pages, and it's got some</p> <p>22 charts; is that fair?</p> <p>23 A That's fair.</p> <p>24 Q And in October 2020, you were the</p> <p>25 executive vice president of every single entity</p>

<p>Page 74</p> <p>1 Dustin Norris</p> <p>2 that this email is being sent to and from;</p> <p>3 correct?</p> <p>4 A I'm looking at the entities.</p> <p>5 I'm executive vice president of most</p> <p>6 of the entities.</p> <p>7 Q Okay. You're the executive vice president</p> <p>8 of each of the entities that are sending this</p> <p>9 memo; correct?</p> <p>10 A No. Not NexPoint Securities.</p> <p>11 Q I appreciate that. Thank you for the</p> <p>12 clarification.</p> <p>13 Did you review this before it was</p> <p>14 sent?</p> <p>15 A I don't remember.</p> <p>16 Q Did you take any steps to make sure that</p> <p>17 it was accurate?</p> <p>18 A Probably not. And that wouldn't have been</p> <p>19 my function. We had a legal and compliance team</p> <p>20 that was – through the shared services agreement</p> <p>21 that prepared memos. This is going to the board.</p> <p>22 That would have all obviously gone through legal</p> <p>23 and compliance. It wouldn't have been my</p> <p>24 function.</p> <p>25 Q Did anybody who served as an officer or</p>	<p>Page 75</p> <p>1 Dustin Norris</p> <p>2 employee of HCMFA have any responsibility to make</p> <p>3 sure that this memo was true and accurate before</p> <p>4 it was sent to the retail board?</p> <p>5 A Lauren Thedford was the secretary of the</p> <p>6 advisers and the funds, and I believe this has to</p> <p>7 do with – and depending on the material, I think</p> <p>8 this has to do with the note, and other things.</p> <p>9 So the finance team, Frank Waterhouse and his team</p> <p>10 at HCMLP, would have been supplying those answers.</p> <p>11 Q Okay. And why do you keep saying Frank</p> <p>12 Waterhouse at HCMLP instead of Frank Waterhouse as</p> <p>13 the treasurer of the entity that's sending this</p> <p>14 memo?</p> <p>15 A Because Frank was the CFO of Highland who</p> <p>16 was responsible for the accounting, finance,</p> <p>17 back-office functions of these funds. And the</p> <p>18 answer – the adviser did not have that</p> <p>19 information, and intentionally hired HCMLP to</p> <p>20 provide that function. And so that is how it was</p> <p>21 viewed. Those were HCMLP employees, and that was</p> <p>22 under the shared services agreement.</p> <p>23 Q Is it your testimony as the HCMFA 30(b)(6)</p> <p>24 witness that Frank Waterhouse did not have any</p> <p>25 responsibility in his capacity as the treasurer of</p>
<p>Page 76</p> <p>1 Dustin Norris</p> <p>2 HCMFA to make sure that this report was true and</p> <p>3 accurate before it was sent to the retail board?</p> <p>4 A I don't know of any function or</p> <p>5 requirement of his role as treasurer of HCMFA that</p> <p>6 he was responsible for reviewing 15(c) memos prior</p> <p>7 to going to the board.</p> <p>8 Q And other than Lauren Thedford, you can't</p> <p>9 identify any officer or employee of HCMFA who had</p> <p>10 any responsibility to make sure that this report</p> <p>11 was true and accurate before it was sent; is that</p> <p>12 correct?</p> <p>13 A No. And I can't – and I would, again, go</p> <p>14 back to legal. And this is a memo that is going</p> <p>15 to the board and is a legal and compliance</p> <p>16 function that would have been provided services by</p> <p>17 HCMLP. And that was always the case. Those</p> <p>18 employees, for years, have provided the</p> <p>19 legal/compliance support of memos of the 15(c)</p> <p>20 process and the support for everything that went</p> <p>21 into it.</p> <p>22 MR. MORRIS: Okay. Move to strike.</p> <p>23 BY MR. MORRIS:</p> <p>24 Q Do you know if Jim Dondero reviewed this</p> <p>25 before it was sent?</p>	<p>Page 77</p> <p>1 Dustin Norris</p> <p>2 A I don't know for sure, but I highly doubt.</p> <p>3 He was never, to my knowledge, involved in</p> <p>4 drafting or reviewing 15(c) memos.</p> <p>5 Q Okay. You'll agree that this memo was</p> <p>6 sent by the advisers in response to the retail</p> <p>7 board's questions; correct?</p> <p>8 A Correct.</p> <p>9 Q And you'll agree –</p> <p>10 A And actually, let me – let me correct</p> <p>11 that.</p> <p>12 It was from the advisers. I believe</p> <p>13 that HCMLP employees sent it, getting back to –</p> <p>14 it was sent by – technicality, but I believe</p> <p>15 Lauren Thedford would have sent this.</p> <p>16 Q And why do you say that she sent it in her</p> <p>17 capacity as an HCMLP employee rather than as the</p> <p>18 secretary of the entity that's actually the author</p> <p>19 of the memo?</p> <p>20 A Because that was the function that they</p> <p>21 were providing as part of the shared services</p> <p>22 agreement. And I – yeah. That was what – she's</p> <p>23 part of the legal team at HCMLP, and that was the</p> <p>24 service she was providing. We didn't have a legal</p> <p>25 and compliance function at HCMFA.</p>

<p>Page 78</p> <p>1 Dustin Norris</p> <p>2 Q Okay.</p> <p>3 MR. MORRIS: Can we scroll down to</p> <p>4 Question 2, please?</p> <p>5 BY MR. MORRIS:</p> <p>6 Q Have you seen Question 2 before?</p> <p>7 A Yes.</p> <p>8 Q Do you have an understanding of what was</p> <p>9 being requested by the retail board in Question</p> <p>10 Number 2?</p> <p>11 A Yes. They are asking for amounts</p> <p>12 currently payable or due in the future to HCMLP by</p> <p>13 HCMFA or NexPoint Advisors.</p> <p>14 Q And – and did the advisers report to the</p> <p>15 retail board in October 2020 that, quote,</p> <p>16 "\$12,286,000 remains outstanding to HCMLP from</p> <p>17 HCMFA"?</p> <p>18 A It says it right there. That's in the</p> <p>19 memo.</p> <p>20 Q Okay.</p> <p>21 A And I would note that came from Frank</p> <p>22 Waterhouse and his team, that information, the</p> <p>23 accounting department at HCMLP.</p> <p>24 MR. MORRIS: Okay. I move to</p> <p>25 strike everything after the portion of</p>	<p>Page 79</p> <p>1 Dustin Norris</p> <p>2 your answer that was responsive to my</p> <p>3 question.</p> <p>4 BY MR. MORRIS:</p> <p>5 Q As HCMFA's 30(b)(6) witness today, have</p> <p>6 you done anything to determine whether or not the</p> <p>7 \$12.286 million number includes the principal</p> <p>8 amount of the notes?</p> <p>9 A Looking at it, we can't tell. Because it</p> <p>10 doesn't line up exactly with those notes. There</p> <p>11 were other notes that had been recorded in the</p> <p>12 books for several years before. And if you add</p> <p>13 those two together, it doesn't add up. So it's</p> <p>14 not clear.</p> <p>15 Q Did you read the testimony of Mr. Klos and</p> <p>16 Ms. Hendrix? I think you said you did; right?</p> <p>17 A I did.</p> <p>18 Q Did you read the portion of their</p> <p>19 testimony where they said that this number</p> <p>20 includes the notes as well as certain other</p> <p>21 amounts that were due and owing to certain</p> <p>22 Highland affiliates?</p> <p>23 A I did – I didn't read every single line,</p> <p>24 and there were, between the two of them – I don't</p> <p>25 know – 600 pages. So if it's in there and you</p>
<p>Page 80</p> <p>1 Dustin Norris</p> <p>2 can point to it, then I can take your</p> <p>3 representation. But I don't remember that.</p> <p>4 Q All right. So did anybody acting on</p> <p>5 behalf of HCMFA – withdrawn.</p> <p>6 Did any officer of – or employee of</p> <p>7 HCMFA do anything to make sure the information in</p> <p>8 this response was true and accurate before it was</p> <p>9 sent to the retail board?</p> <p>10 A We received it from the individuals</p> <p>11 responsible. And there was no – you know, there</p> <p>12 was no reason to doubt that it was incorrect.</p> <p>13 Right? These were professionals. We were relying</p> <p>14 on them. This is Frank Waterhouse, Dave Klos,</p> <p>15 Kristen. We anticipated this would be accurate.</p> <p>16 Q Okay. You anticipated it. But it's your</p> <p>17 testimony that no officer or employee of HCMFA did</p> <p>18 anything independently to make sure that it was</p> <p>19 accurate; that they completely and 100 percent</p> <p>20 just deferred and relied on somebody else under a</p> <p>21 contract?</p> <p>22 A Frank Waterhouse was the treasurer. You</p> <p>23 said any – any officer. He was – in his role,</p> <p>24 he provided this information. And I don't know</p> <p>25 his extent of how he looked into it, but if you</p>	<p>Page 81</p> <p>1 Dustin Norris</p> <p>2 look at the email chain, it didn't look too</p> <p>3 extensive. And if you even look at this, he's</p> <p>4 saying that the earliest the note between HCMLP</p> <p>5 and HCMFA can come due is May 21st. He himself</p> <p>6 seems to be confused here, because as we found out</p> <p>7 through discovery and in the testimony of what has</p> <p>8 come out, there was an agreement – that was a</p> <p>9 separate agreement. That wasn't related to the</p> <p>10 notes at issue in this case.</p> <p>11 And so I don't know the extent that</p> <p>12 was gone into this, but it – it – there's</p> <p>13 confusion even in the response.</p> <p>14 MR. MORRIS: Okay. I move to</p> <p>15 strike.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q Again, I was just asking about the</p> <p>18 identity of anybody who was charged with the</p> <p>19 responsibility of making sure that this was true</p> <p>20 and accurate.</p> <p>21 Is there any officer or employee of</p> <p>22 HCMFA who was charged with the responsibility of</p> <p>23 making sure this response was true and accurate?</p> <p>24 A Yeah. It was sent to – the request went</p> <p>25 to Frank Waterhouse because he and his team would</p>

<p>Page 82</p> <p>1 Dustin Norris</p> <p>2 have this information. That's -- that's where we</p> <p>3 would get this information.</p> <p>4 Q Okay. Thank you.</p> <p>5 MR. RUKAVINA: Hey, John, let me</p> <p>6 just interject for a little. Let's go off</p> <p>7 the record for just a minute.</p> <p>8 (Discussion off the record.)</p> <p>9 BY MR. MORRIS:</p> <p>10 Q Do you know, as HCMFA's 30(b)(6)</p> <p>11 representative, whether the \$12.286 million</p> <p>12 includes the \$7.5 million -- withdrawn.</p> <p>13 Do you know if the 12. -- withdrawn.</p> <p>14 As HCMFA's 30(b)(6) witness, do you</p> <p>15 know whether the \$12.286 million referenced in</p> <p>16 Response Number 2 includes the \$7.4 million in</p> <p>17 principal amount on the notes?</p> <p>18 A I don't.</p> <p>19 Q Okay. Did you do anything to try to</p> <p>20 answer that question before appearing for today's</p> <p>21 deposition?</p> <p>22 A Yeah. We discussed this with counsel. We</p> <p>23 don't have underlying backup. We couldn't talk to</p> <p>24 Frank Waterhouse on this in preparation, but the</p> <p>25 numbers just don't match up to principal amounts</p>	<p>Page 83</p> <p>1 Dustin Norris</p> <p>2 and what is owing. We don't have information on</p> <p>3 the other notes. So discussed it with counsel,</p> <p>4 but I -- we don't have any backup to support or --</p> <p>5 Q Did you make -- did you make any attempt</p> <p>6 to speak with Ms. Thedford?</p> <p>7 A No, I didn't. And she wouldn't have that</p> <p>8 information. She's an attorney and was involved</p> <p>9 in the legal field, and she's no longer employed</p> <p>10 there or at Skyview.</p> <p>11 MR. MORRIS: I move to strike.</p> <p>12 BY MR. MORRIS:</p> <p>13 Q Okay. And so you don't know what the</p> <p>14 component parts of this \$12.286 million number</p> <p>15 are; correct?</p> <p>16 A I don't.</p> <p>17 Q Okay. Do you see the last sentence of</p> <p>18 this response that says, quote: "The adviser</p> <p>19 notes that both entities have the full faith and</p> <p>20 support of Jim Dondero," close quote?</p> <p>21 A I do.</p> <p>22 Q Do you know what that means?</p> <p>23 A Other than what Frank Waterhouse</p> <p>24 testified -- and I, again, refer you to his</p> <p>25 deposition -- that -- I believe that wording came</p>
<p>Page 84</p> <p>1 Dustin Norris</p> <p>2 from him, and he emailed that. So I would refer</p> <p>3 you to his testimony.</p> <p>4 Q Well, as the 30(b)(6) witness, you were</p> <p>5 asked to be prepared about communications to the</p> <p>6 retail board; correct?</p> <p>7 A Yes.</p> <p>8 Q Okay. Did you do anything to try to</p> <p>9 figure out what that sentence meant -- that</p> <p>10 sentence meant, other than reading Frank</p> <p>11 Waterhouse's deposition transcript?</p> <p>12 A Knowing that it came from Frank, and Frank</p> <p>13 elaborated, I didn't do any additional research.</p> <p>14 Q Did you ask Mr. Dondero if he was aware</p> <p>15 that that statement was included in the report to</p> <p>16 the retail board?</p> <p>17 A I did not.</p> <p>18 Q Do you know why this statement was</p> <p>19 included in the report to the retail board?</p> <p>20 A I could speculate, but I don't know</p> <p>21 specifically.</p> <p>22 Q Do you know if Mr. Dondero authorized the</p> <p>23 advisers to inform the retail board, in October</p> <p>24 of 2020, that the advisers had the full faith and</p> <p>25 support of Mr. Dondero?</p>	<p>Page 85</p> <p>1 Dustin Norris</p> <p>2 A I'm not aware, and if you look at Frank's</p> <p>3 testimony, I believe he testified that he -- he</p> <p>4 didn't have that authority either, but I'm not</p> <p>5 sure. I would refer you to his -- I don't have</p> <p>6 any other knowledge.</p> <p>7 Q Okay. So it's HCMFA's position that the</p> <p>8 statement in the last sentence of Response</p> <p>9 Number 2 was unauthorized. Do I have that</p> <p>10 correctly?</p> <p>11 A I don't know that we're taking that</p> <p>12 position either way. It wasn't something</p> <p>13 that -- that we're -- was even part of the -- our</p> <p>14 arguments.</p> <p>15 Q I'm not asking if it's part of your</p> <p>16 arguments. I'm just asking you, as a factual</p> <p>17 matter, does HCMFA contend that that sentence was</p> <p>18 included without authorization?</p> <p>19 A I don't have the knowledge of that.</p> <p>20 That's -- I'm not going to contend that.</p> <p>21 Q Okay.</p> <p>22 A It may have been. I don't know.</p> <p>23 Q Okay. So this letter was sent over a year</p> <p>24 ago. Do I have that right?</p> <p>25 A What's the date on it?</p>

<p>Page 86</p> <p>1 Dustin Norris</p> <p>2 MR. MORRIS: If we can go back to</p> <p>3 the top.</p> <p>4 THE WITNESS: Yup.</p> <p>5 BY MR. MORRIS:</p> <p>6 Q Okay. Has – have the advisers ever told</p> <p>7 the retail board that the response to Question</p> <p>8 Number 2 was inaccurate in any way?</p> <p>9 A Specifically saying, "Hey, let me tell you</p> <p>10 this memo, Question 2, let me go back, it was</p> <p>11 inaccurate," no, that was never a specific</p> <p>12 disclosure of the retail board.</p> <p>13 However, the retail board is aware of</p> <p>14 all of the facts and circumstances surrounding the</p> <p>15 notes, and so they're aware of our position.</p> <p>16 They're aware of – they've been demanded.</p> <p>17 There's been a lawsuit involved on both notes.</p> <p>18 And – and – but, no, this specific</p> <p>19 Number 2 is incorrect, no. But they're aware of</p> <p>20 our position and what we found out since then.</p> <p>21 Q Okay. Earlier in 2020, before this memo</p> <p>22 was sent to the retail board, HCMFA had provided</p> <p>23 to the retail board its financial statements for</p> <p>24 the period ending June 30, 2020; correct?</p> <p>25 A I believe that's typical in our August</p>	<p>Page 87</p> <p>1 Dustin Norris</p> <p>2 meeting as part of the 15(c) process, but – I</p> <p>3 don't know if you have that in hand, but I believe</p> <p>4 that was supplied. I'm not certain. Sometimes it</p> <p>5 was 12/31 balance sheets, sometimes it was a</p> <p>6 June 30th balance sheet.</p> <p>7 Q Okay. Can we – are you aware – have you</p> <p>8 seen an email exchange that preceded the – the</p> <p>9 finalization of this memo to the retail board?</p> <p>10 A I believe it was part of your exhibits.</p> <p>11 Q All right.</p> <p>12 MR. MORRIS: So let's put that up</p> <p>13 on the screen, Exhibit 36.</p> <p>14 (Exhibit 36 tendered.)</p> <p>15 BY MR. MORRIS:</p> <p>16 Q So is this the document that you've seen</p> <p>17 before?</p> <p>18 A Yes.</p> <p>19 Q Okay.</p> <p>20 MR. MORRIS: And can we start at</p> <p>21 the bottom of the document?</p> <p>22 BY MR. MORRIS:</p> <p>23 Q Okay. And do you know who Stacy from</p> <p>24 Blank Rome is?</p> <p>25 A I do.</p>
<p>Page 88</p> <p>1 Dustin Norris</p> <p>2 Q And who is that?</p> <p>3 A She is independent counsel for the retail</p> <p>4 board, the independent directors.</p> <p>5 Q And did she provide to the people on this</p> <p>6 email string certain questions that the retail</p> <p>7 board had in connection with its annual 15(c)</p> <p>8 review?</p> <p>9 A Yes. These were follow-up requests. So</p> <p>10 they have a memo that she provides early on with</p> <p>11 an extensive list of questions, and these were the</p> <p>12 follow-up questions from the board.</p> <p>13 Q Okay. And so it was sent to you,</p> <p>14 actually; correct?</p> <p>15 A To me and Lauren.</p> <p>16 MR. MORRIS: Can we scroll up a</p> <p>17 little bit, please? Keep going.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q And then Lauren forwards it to certain</p> <p>20 people, including you; correct?</p> <p>21 A She forwards it to Thomas and copies me.</p> <p>22 Q Uh-huh. And – and she includes the</p> <p>23 questions that are being asked by the retail</p> <p>24 board; correct?</p> <p>25 A I don't know if – I don't know if that's</p>	<p>Page 89</p> <p>1 Dustin Norris</p> <p>2 all of them. I don't know if you have the memo.</p> <p>3 If you represent that is all the questions,</p> <p>4 then –</p> <p>5 Q Yeah.</p> <p>6 A – then I'll take that representation,</p> <p>7 but –</p> <p>8 Q And – and Question Number 2 is the same</p> <p>9 Question Number 2 that we just looked at in the</p> <p>10 report that was given to the retail board;</p> <p>11 correct?</p> <p>12 A I don't know if it's exact, but – I don't</p> <p>13 know if you want to pull that up.</p> <p>14 Q Don't you have a copy of it with you right</p> <p>15 there?</p> <p>16 A I don't know if I have a copy of that.</p> <p>17 Oh, I have the exhibits. What exhibit was that?</p> <p>18 I have it in PDF.</p> <p>19 Q Yeah, that's – that was 59.</p> <p>20 A I'm scrolling. There are 650 pages here.</p> <p>21 Sorry. Which exhibit again?</p> <p>22 Q You know, let's just move on.</p> <p>23 Is it fair to say that Ms. Thedford</p> <p>24 forwarded to Mr. Surgent, you, and others,</p> <p>25 questions that had been presented by Stacy, the</p>

<p>Page 90</p> <p>1 Dustin Norris</p> <p>2 retail board's outside counsel?</p> <p>3 A Just one correction there. She forwarded</p> <p>4 it to Mr. Surgent and copied me.</p> <p>5 Q Fair enough.</p> <p>6 A I'm not on the "To" line. That would</p> <p>7 be –</p> <p>8 MR. MORRIS: Let's scroll down,</p> <p>9 please. Let's scroll.</p> <p>10 BY MR. MORRIS:</p> <p>11 Q And then – and then she forwards it</p> <p>12 further to Mr. Waterhouse, Mr. Klos, and</p> <p>13 Ms. Hendrix.</p> <p>14 Do you see that?</p> <p>15 A I do.</p> <p>16 Q And you're still copied on it; correct?</p> <p>17 A I am.</p> <p>18 Q And do you see that she's asking Frank,</p> <p>19 Mr. Klos, and Kristin to respond to Question</p> <p>20 Number 2 that concerns material outstanding</p> <p>21 amounts currently payable or due in the future to</p> <p>22 Highland or its affiliates by either of the</p> <p>23 advisers?</p> <p>24 A Yes, it – HCMLP will take that as a typo.</p> <p>25 But yes. And that would be standard. Lauren</p>	<p>Page 91</p> <p>1 Dustin Norris</p> <p>2 would go to them as the source for that</p> <p>3 information.</p> <p>4 Q Okay.</p> <p>5 MR. MORRIS: And let's scroll up</p> <p>6 and see the response.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q And do you see Mr. Waterhouse responded</p> <p>9 with one word: "Yes"?</p> <p>10 A Yes, I see that.</p> <p>11 Q And then Ms. Thedford asked if</p> <p>12 Mr. Waterhouse could provide the amounts.</p> <p>13 Do you see that?</p> <p>14 A I do.</p> <p>15 Q And you're still copied on this email</p> <p>16 chain; correct?</p> <p>17 A I am.</p> <p>18 Q So –</p> <p>19 A Which, again, is not unusual to copy me on</p> <p>20 some things I wish they wouldn't. But I was</p> <p>21 copied on board items fairly regularly.</p> <p>22 MR. MORRIS: Okay. I move to</p> <p>23 strike.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q I appreciate your wishes, but the question</p>
<p>Page 92</p> <p>1 Dustin Norris</p> <p>2 was simply whether or not, you know, you would</p> <p>3 acknowledge that you were copied on this email.</p> <p>4 A Yup, that's my email.</p> <p>5 Q Okay. And let's see what the next</p> <p>6 response is.</p> <p>7 And do you see Mr. Waterhouse</p> <p>8 responds – can you read Mr. Waterhouse's</p> <p>9 response?</p> <p>10 A I can. He said: "It's on the balance</p> <p>11 sheet that was provided the board as part of the</p> <p>12 15(c) materials."</p> <p>13 Q Okay. So everybody to whom Mr. Waterhouse</p> <p>14 has sent – withdrawn.</p> <p>15 So you don't dispute, as HCMFA's</p> <p>16 30(b)(6) witness, that Mr. Waterhouse informed all</p> <p>17 of the recipients of his email on Tuesday,</p> <p>18 October 6th, 2020, at 6:05 p.m. that the answer to</p> <p>19 the retail board's Question Number 2 could be</p> <p>20 found in HCMFA's balance sheet; correct?</p> <p>21 A Correct.</p> <p>22 Q Okay. Let's go –</p> <p>23 A Actually, can you go back down to the</p> <p>24 answer – the exact question?</p> <p>25 Q Of course.</p>	<p>Page 93</p> <p>1 Dustin Norris</p> <p>2 Okay.</p> <p>3 A "Are there material outstanding amounts</p> <p>4 currently payable or due to the future by HCMLP to</p> <p>5 HCMFA" – yeah – "or any other affiliate?"</p> <p>6 Okay.</p> <p>7 Q Having read that, does that change your</p> <p>8 answer at all?</p> <p>9 A And so – go back to your original</p> <p>10 question on whether his –</p> <p>11 Q Right. So Mr. –</p> <p>12 MR. MORRIS: Can we scroll back up</p> <p>13 to Mr. Waterhouse's response?</p> <p>14 BY MR. MORRIS:</p> <p>15 Q Thank you for your patience, Mr. Norris.</p> <p>16 A Uh-huh.</p> <p>17 Q You'll see that Mr. Waterhouse responds at</p> <p>18 6:05 p.m. on October 6th, and my question is a</p> <p>19 simple one: Does HCMFA dispute that in</p> <p>20 Mr. Waterhouse's email that he is telling the</p> <p>21 recipients that the answer to the retail board's</p> <p>22 Question Number 2 can be found in HCMFA's balance</p> <p>23 sheet?</p> <p>24 A I would say the answer – his – his</p> <p>25 response is the answer to the retail board is not</p>

<p>Page 94</p> <p>1 Dustin Norris</p> <p>2 completely accurate, because there was – there's</p> <p>3 not enough there to be responsive. I think what</p> <p>4 he's saying here is to Lauren, "Hey, it's on the</p> <p>5 balance sheet. Can you look at it and figure it</p> <p>6 out?"</p> <p>7 And I – I think they go back and</p> <p>8 forth, "Well, can you give us more information?"</p> <p>9 And so it's – this is not responsive to the</p> <p>10 question and isn't what was provided to the board,</p> <p>11 but that's –</p> <p>12 Q Well, let – let's see what Ms. Thedford</p> <p>13 does. Ms. Thedford's the lawyer, right?</p> <p>14 A She is.</p> <p>15 Q Yeah. But she's also the secretary of</p> <p>16 HCMFA; correct?</p> <p>17 A At this time, I believe so, yes.</p> <p>18 Q And you wouldn't dispute that she is</p> <p>19 taking the lead on formulating the advisers'</p> <p>20 response to the retail board; correct?</p> <p>21 A I would not dispute that.</p> <p>22 Q Okay. And do you see that she reports to</p> <p>23 you and everybody else in her email that she has</p> <p>24 taken information from the 6/30 financials?</p> <p>25 A Yes, I see the below from the 6/30</p>	<p>Page 95</p> <p>1 Dustin Norris</p> <p>2 financials. And, again, to correct to me, I'm</p> <p>3 CC'd. It's a nuance, but she's representing to</p> <p>4 Frank and Dave and Kristin with a CC to me.</p> <p>5 Q Okay. Does HCMFA acknowledge that the</p> <p>6 information contained in the October 23rd, 2020,</p> <p>7 report to the retail board with respect to</p> <p>8 Question Number 2 was derived from HCMFA's</p> <p>9 June 30th, 2020, financials?</p> <p>10 A Sorry. One more time?</p> <p>11 Q Will you agree, as HCMFA's 30(b)(6)</p> <p>12 witness, that the information provided to the</p> <p>13 retail board in October 2020 in response to</p> <p>14 Question Number 2 was taken directly from HCMFA's</p> <p>15 financial statements for the period ending</p> <p>16 June 30th, 2020?</p> <p>17 A Yeah. The unaudited financials, yes.</p> <p>18 Q Okay. And so – so as HCMFA's 30(b)(6)</p> <p>19 witness, you will agree that the \$12,286,000</p> <p>20 figure that was included in the former response to</p> <p>21 the retail board was obtained from HCMFA's</p> <p>22 unaudited financial statements for the period</p> <p>23 ending June 30th, 2020; correct?</p> <p>24 A It appears that way.</p> <p>25 And I – I think – and, again, we're</p>
<p>Page 96</p> <p>1 Dustin Norris</p> <p>2 looking at a draft answer here. I don't have the</p> <p>3 final answer. But it looks as work product that</p> <p>4 she's pulling numbers from the unaudited balance</p> <p>5 sheet and plugging them in here.</p> <p>6 Q Okay. And we can look at the final if you</p> <p>7 want, but that \$12,286,000 number that was due to</p> <p>8 HCMLP as of June 30th 2020, that's the exact</p> <p>9 figure that was given to the retail board in the</p> <p>10 final report; correct?</p> <p>11 A "Final report," meaning the final memo –</p> <p>12 final memos?</p> <p>13 Q Yes.</p> <p>14 A Yes. Yes, I believe so.</p> <p>15 Q Okay.</p> <p>16 MR. MORRIS: Can you scroll back up</p> <p>17 to the last email?</p> <p>18 BY MR. MORRIS:</p> <p>19 Q So this is Mr. Waterhouse's response to</p> <p>20 Ms. Thedford. And, again, Mr. Waterhouse is</p> <p>21 Highland's CFO and the advisers' treasurer;</p> <p>22 correct?</p> <p>23 A Correct.</p> <p>24 Q And at this time, Ms. Thedford is an</p> <p>25 attorney at Highland, but she also serves as the</p>	<p>Page 97</p> <p>1 Dustin Norris</p> <p>2 secretary for the advisers; correct?</p> <p>3 A That's correct.</p> <p>4 Q And you are the executive vice president</p> <p>5 for the advisers; correct?</p> <p>6 A As of this date, yes.</p> <p>7 Q And you had no position with Highland;</p> <p>8 correct?</p> <p>9 A At this time?</p> <p>10 Q Correct.</p> <p>11 A No position with Highland, no.</p> <p>12 Q Okay. How about Mr. Post? Had he</p> <p>13 transitioned from Highland to the advisers as of</p> <p>14 October 6th?</p> <p>15 A I don't believe so.</p> <p>16 Q Okay. It happened in October, though;</p> <p>17 right?</p> <p>18 A I – I don't know.</p> <p>19 Q Okay.</p> <p>20 A Late October/November. It was late in the</p> <p>21 year.</p> <p>22 Q Okay. And do you know if anybody ever</p> <p>23 told Mr. Waterhouse in October 2020 that there was</p> <p>24 any aspect of his email that was incorrect?</p> <p>25 A Not at that time, no, that I'm – not that</p>

<p>Page 98</p> <p>1 Dustin Norris</p> <p>2 I'm aware of.</p> <p>3 Q Okay.</p> <p>4 A And – and would we have reason to doubt</p> <p>5 him? This – he was the source of the</p> <p>6 information.</p> <p>7 Q Okay. And do you see that the last</p> <p>8 sentence of his email actually refers to the last</p> <p>9 sentence of Response Number 2 that was given to</p> <p>10 the retail board later in October 2020?</p> <p>11 A I do.</p> <p>12 Q Did you ever ask Mr. Waterhouse anything</p> <p>13 about that last sentence?</p> <p>14 A I don't believe so.</p> <p>15 Q Do you see that he says, quote: "The</p> <p>16 response should include, as I covered in the board</p> <p>17 meeting, that both entities have the full faith</p> <p>18 and backing from Jim Dondero, and to my knowledge</p> <p>19 that hasn't changed"?</p> <p>20 Do you see that?</p> <p>21 A I do.</p> <p>22 Q Do you know what board meeting he's</p> <p>23 referring to?</p> <p>24 A "The response should include, as I covered</p> <p>25 in the board meeting, that both entities have a</p>	<p>Page 99</p> <p>1 Dustin Norris</p> <p>2 full faith and backing."</p> <p>3 So I don't know the exact board</p> <p>4 meeting. However, we do have an August board</p> <p>5 meeting related to 15(c). There's typically an</p> <p>6 in-person or telephonic meeting in August, and</p> <p>7 then there's a September board meeting that is</p> <p>8 devoted almost exclusively to the 15(c) process.</p> <p>9 And after that, there is follow-up</p> <p>10 meetings – multiple sometimes, particularly in</p> <p>11 2020 during the bankruptcy proceedings that –</p> <p>12 where the board was getting comfortable. So it</p> <p>13 would have been one of those meetings, but I don't</p> <p>14 know which one.</p> <p>15 Q And – and did you personally participate</p> <p>16 in a board meeting where Mr. Waterhouse covered</p> <p>17 the topic of the advisers having the full faith</p> <p>18 and backing from Mr. Dondero?</p> <p>19 A I – I probably would have been in most or</p> <p>20 all of those board meetings, but I don't remember</p> <p>21 that specifically.</p> <p>22 Q Okay. Do you know – do you know whether</p> <p>23 anybody who's copied on this email ever questioned</p> <p>24 any aspect of the last sentence of</p> <p>25 Mr. Waterhouse's email at any time prior to the</p>
<p>Page 100</p> <p>1 Dustin Norris</p> <p>2 sending of the final memo on October 23rd?</p> <p>3 A Not that I'm aware of.</p> <p>4 Q You didn't; isn't that right?</p> <p>5 A I don't know that I read it, but I didn't</p> <p>6 question it. If I – I either didn't read it or I</p> <p>7 didn't question it.</p> <p>8 Q Okay. So you have no recollection of ever</p> <p>9 asking Mr. Waterhouse what he meant by the last</p> <p>10 sentence of this email; correct?</p> <p>11 A No, I have no recollection.</p> <p>12 Q And you have no recollection of any</p> <p>13 recipient of this email asking Mr. Waterhouse what</p> <p>14 he meant by that last sentence; correct?</p> <p>15 A I don't remember.</p> <p>16 Q And you never told Mr. Waterhouse that you</p> <p>17 had no knowledge of him having covered this issue</p> <p>18 before the board?</p> <p>19 A You're wondering if I ever told him I had</p> <p>20 no knowledge?</p> <p>21 Q Yeah.</p> <p>22 A No, I never talked to him about that.</p> <p>23 Q And to the best of your knowledge, no</p> <p>24 recipient of this email ever challenged</p> <p>25 Mr. Waterhouse's statement in this last sentence;</p>	<p>Page 101</p> <p>1 Dustin Norris</p> <p>2 correct?</p> <p>3 A I don't know what the conversations were</p> <p>4 had between the others, but I have no knowledge of</p> <p>5 that.</p> <p>6 Q Okay.</p> <p>7 A And – and you've got – sorry. Go ahead.</p> <p>8 Q This email string is – is an email string</p> <p>9 devoted for the sole purpose of addressing</p> <p>10 questions posed by the retail board in connection</p> <p>11 with the 15(c) review; correct?</p> <p>12 A I believe so.</p> <p>13 Q Okay. Have you ever seen HCMFA's</p> <p>14 unaudited financial statements for June 30th,</p> <p>15 2020?</p> <p>16 A Yes.</p> <p>17 Q And do you know if those audited –</p> <p>18 unaudited financial statements included the</p> <p>19 amounts due and payable under the notes?</p> <p>20 A I – I think that – I – I don't</p> <p>21 remember, but I think our position is it's</p> <p>22 unclear, because the amounts don't agree to</p> <p>23 the – again, we have prior notes, we have these</p> <p>24 notes. The amounts don't line up.</p> <p>25 So it's – it's – the underlying</p>

<p>Page 102</p> <p>1 Dustin Norris</p> <p>2 backing is not provided. There's no footnotes.</p> <p>3 It's just a number that says due to HCMLP.</p> <p>4 Q Do you know – do you know – do you have</p> <p>5 any recollection as to the totality of HCMFA's</p> <p>6 liabilities as of June 30th, 2020?</p> <p>7 A Including this note? Or just this note?</p> <p>8 Q All – all liabilities. What's the bottom</p> <p>9 of the balance sheet?</p> <p>10 A I don't know. Do you have it? Do you</p> <p>11 want to pull it up?</p> <p>12 Q I don't.</p> <p>13 A Yeah, I don't remember.</p> <p>14 MR. RUKAVINA: Hey, John, it's</p> <p>15 approaching 12:15. Just whenever, you</p> <p>16 know –</p> <p>17 MR. MORRIS: Yeah. You know what?</p> <p>18 I was just about to change topics, so this</p> <p>19 is a good time.</p> <p>20 MR. RUKAVINA: Okay.</p> <p>21 MR. MORRIS: Why don't we stop</p> <p>22 here, and we'll come back at the top of</p> <p>23 the hour.</p> <p>24 MR. RUKAVINA: Excellent. Thank</p> <p>25 you.</p>	<p>Page 103</p> <p>1 Dustin Norris</p> <p>2 (Recess from 12:11 p.m. to 1:06 p.m. CST)</p> <p>3 BY MR. MORRIS:</p> <p>4 Q Mr. Norris, Topic Number 9 relates to</p> <p>5 consent fees.</p> <p>6 Do you understand that?</p> <p>7 A I do.</p> <p>8 Q Do you have an understanding of what a</p> <p>9 "consent fee" is?</p> <p>10 A I do.</p> <p>11 Q Did you do anything to prepare for this</p> <p>12 particular topic?</p> <p>13 A I did.</p> <p>14 Q What did you do to prepare for this topic?</p> <p>15 A I discussed the consent fee with</p> <p>16 Mr. Dondero, with Mr. Rukavina, and with</p> <p>17 Mr. Sauter.</p> <p>18 Q Okay. Mr. Sauter has no personal</p> <p>19 knowledge of any consent fee that was paid in the</p> <p>20 spring of 2019; correct?</p> <p>21 A No.</p> <p>22 Q Okay. What's your understanding of what a</p> <p>23 "consent fee" is?</p> <p>24 A Generally or the specific consent fee</p> <p>25 in – that –</p>
<p>Page 104</p> <p>1 Dustin Norris</p> <p>2 Q Let's start generally.</p> <p>3 A Yeah. So a "consent fee" is a fee paid to</p> <p>4 a – paid to someone who's agreeing to amend terms</p> <p>5 or change the structure of the – of a document or</p> <p>6 a loan. In – in bank loan world, or loan world,</p> <p>7 if you are going to amend or extend or change the</p> <p>8 terms, typically there was a consent fee paid to</p> <p>9 those willing to consent.</p> <p>10 Those that have voted or consented</p> <p>11 receive a fee.</p> <p>12 Q Okay. And did HCMFA pay any consent fees</p> <p>13 in or around April or May 2019?</p> <p>14 A It began to pay consent fees in May</p> <p>15 of 2019, I believe.</p> <p>16 Q Okay. Are you looking at something as you</p> <p>17 prepare your answer?</p> <p>18 A Yeah. I'm looking at Topic Number 9 that</p> <p>19 says consent fee in April or May 2019.</p> <p>20 Q Okay. Thank you so much.</p> <p>21 And – and I think you testified that</p> <p>22 they began paying consent fees at around that</p> <p>23 time?</p> <p>24 A That's right.</p> <p>25 Q What do you mean by that?</p>	<p>Page 105</p> <p>1 Dustin Norris</p> <p>2 A Yeah. So the consent fee was related to</p> <p>3 the global allocation fund that converted from an</p> <p>4 open-end fund to a closed-end fund, and there was</p> <p>5 a 3 percent fee that would be paid to investors</p> <p>6 that, one, consented to the conversion from an</p> <p>7 open-end fund to a closed-end fund, but also held</p> <p>8 their investment through the conversion.</p> <p>9 The conversion was finalized in</p> <p>10 February of 2019, and the consent fee was an</p> <p>11 operational challenge because you had to determine</p> <p>12 who the investors were that voted yes and that</p> <p>13 held on to the conversion.</p> <p>14 So with that, the – the amounts that</p> <p>15 were paid, there was an operational challenge to</p> <p>16 determine who – who needed to be paid, and so</p> <p>17 they were deposited and then paid out over a</p> <p>18 couple-month period.</p> <p>19 Q And who made the decision to pay the</p> <p>20 consent fee?</p> <p>21 A So the consent fee was a collaborative</p> <p>22 decision of senior management. Jim Dondero and</p> <p>23 myself were involved in the decision, the</p> <p>24 discussion to – and it was a novel idea in terms</p> <p>25 of converting from an open-end fund to a</p>

<p>Page 106</p> <p>1 Dustin Norris</p> <p>2 closed-end fund, and it was submitted to</p> <p>3 investors. It went through SEC review as a proxy</p> <p>4 statement, and it went out to shareholders who</p> <p>5 needed to vote for the proposal.</p> <p>6 Q And who paid the consent fee? HCMFA?</p> <p>7 A My understanding is HCMFA as the adviser</p> <p>8 of the global allocation fund paid the consent fee</p> <p>9 to investors.</p> <p>10 Q And whose idea was it to seek consent to</p> <p>11 change from an open fund to a closed-end fund?</p> <p>12 A I – I would say it was collaborative of</p> <p>13 senior management. Jim Dondero, myself, legal</p> <p>14 compliance was involved. It was, you know, Mark</p> <p>15 Okada, who was a partner at the time. There was a</p> <p>16 lot of discussion involved.</p> <p>17 Q And when the decision was made to seek</p> <p>18 consent to change from an open-end fund to a</p> <p>19 closed-end fund, did HCMFA understand that there</p> <p>20 would be costs, fees, and expenses associated with</p> <p>21 that decision?</p> <p>22 A Being cost fees as in the consent fee?</p> <p>23 Q Correct.</p> <p>24 A Yes.</p> <p>25 Q And did it undertake any analysis to</p>	<p>Page 107</p> <p>1 Dustin Norris</p> <p>2 determine what the likely total fee would be?</p> <p>3 A Yeah. I'm sure they did.</p> <p>4 Q Do you know what the total fee</p> <p>5 paid – what the total consent fee paid was?</p> <p>6 A I don't have the exact amount, but it was</p> <p>7 over \$5 million.</p> <p>8 Q Okay. And over what period of time were</p> <p>9 the consent fees paid?</p> <p>10 A I know they were paid in May and June, and</p> <p>11 there may be a portion that were paid thereafter,</p> <p>12 but at least May and June of 2019. There were</p> <p>13 certain broker-dealers that reported later, and</p> <p>14 when those were reported and verified, they were</p> <p>15 paid out. I don't remember the final date of the</p> <p>16 last distribution.</p> <p>17 Q Okay. And forgive me. It's not my</p> <p>18 business. But were the consent fees paid to the</p> <p>19 fund's shareholders?</p> <p>20 A They were paid to the shareholders.</p> <p>21 That's correct.</p> <p>22 Q Okay.</p> <p>23 A That's consented. The shareholders had to</p> <p>24 vote, and they had to be a shareholder on</p> <p>25 conversion date.</p>
<p>Page 108</p> <p>1 Dustin Norris</p> <p>2 Q Okay. And the decision to seek and obtain</p> <p>3 consent, was that a voluntary decision by HCMFA?</p> <p>4 A To seek consent to move to a closed-end</p> <p>5 fund?</p> <p>6 Q Yes. That's not something that any</p> <p>7 regulator required, was it?</p> <p>8 A No.</p> <p>9 Q It's not something that any rule or</p> <p>10 anybody mandated; correct?</p> <p>11 A Not that I believe.</p> <p>12 Q Okay. How did HCMFA fund the payment of</p> <p>13 the total consent fee of over \$5 million?</p> <p>14 A Yeah, from cash that it had on the balance</p> <p>15 sheet.</p> <p>16 Q And where did it get the cash that was on</p> <p>17 the balance sheet?</p> <p>18 A The cash came from the transaction that we</p> <p>19 discussed earlier – and you showed the capital</p> <p>20 coming in from Highland – which was compensation</p> <p>21 for the NAV error.</p> <p>22 Q So it used the money that it received in</p> <p>23 the transfers that we talked about to pay the</p> <p>24 consent fee. Do I have that right? Or at least</p> <p>25 some of it?</p>	<p>Page 109</p> <p>1 Dustin Norris</p> <p>2 A Yes.</p> <p>3 Q And, in fact, it used approximately</p> <p>4 \$5 million of the moneys paid in May 2019 to pay</p> <p>5 the consent fee of approximately \$5 million; is</p> <p>6 that fair?</p> <p>7 A At least \$5 million.</p> <p>8 Q Okay. Do you know the exact number?</p> <p>9 A Of the consent fee?</p> <p>10 Q Withdrawn.</p> <p>11 Do you have a better or more precise</p> <p>12 estimate of the total consent fee other than</p> <p>13 \$5 million?</p> <p>14 A It was over \$5 million. I don't remember</p> <p>15 the exact amount, whether it was 5.6 or 5.2 –</p> <p>16 Q All right.</p> <p>17 A – because it was paid over time.</p> <p>18 Q Let's talk about the TerreStar valuation</p> <p>19 issue for a few minutes, if we can.</p> <p>20 A Okay.</p> <p>21 Q Just generally, in 2018/2019, HCMFA spent</p> <p>22 a fair amount of time addressing the consequences</p> <p>23 of a valuation error concerning TerreStar. Do I</p> <p>24 have that right?</p> <p>25 A There was a lot in there, but there was,</p>

<p>Page 110</p> <p>1 Dustin Norris</p> <p>2 during that time, a lot of discussions with</p> <p>3 TerreStar over the concerns of a valuation error</p> <p>4 in 2018 and '19.</p> <p>5 Q And did it ultimately turn out that there</p> <p>6 was a valuation error involving TerreStar?</p> <p>7 A There was.</p> <p>8 Q Okay. And had HCMFA retained Houlihan</p> <p>9 Lokey in connection with doing the TerreStar</p> <p>10 valuation?</p> <p>11 A Houlihan Lokey was involved in the</p> <p>12 valuation, yes.</p> <p>13 Q And who retained Houlihan Lokey?</p> <p>14 A I don't know.</p> <p>15 Q As you sit here right now, you can't tell</p> <p>16 me who retained Houlihan Lokey?</p> <p>17 A I don't know if it was HCMLP or HCMFA</p> <p>18 or – I don't know.</p> <p>19 Q Okay. Are you familiar with the firm</p> <p>20 Houlihan Lokey?</p> <p>21 A I am.</p> <p>22 Q And do you know what services they</p> <p>23 provided in connection with the TerreStar</p> <p>24 valuation?</p> <p>25 A I do.</p>	<p>Page 111</p> <p>1 Dustin Norris</p> <p>2 Q Can you describe for me the services that</p> <p>3 were provided by Houlihan Lokey in connection with</p> <p>4 the TerreStar –</p> <p>5 A And I would say I do generally. I was not</p> <p>6 involved in the individual details. That was all</p> <p>7 the HCMLP employees.</p> <p>8 So all of the Highland employees that</p> <p>9 were involved in the shared services agreement,</p> <p>10 the valuation committee, valuation services were</p> <p>11 the responsibility of HCMLP. Key inputs were</p> <p>12 provided by HCMLP. Key estimates and</p> <p>13 interpretations to Houlihan, and they used their</p> <p>14 models to calculate a valuation that was then</p> <p>15 approved by the valuation committee at HCMLP.</p> <p>16 And so that's my general understanding</p> <p>17 of the valuation process.</p> <p>18 Q Do you know how much Houlihan Lokey was</p> <p>19 paid for its work?</p> <p>20 A I don't.</p> <p>21 Q Do you know if there's an engagement</p> <p>22 letter pursuant to which Houlihan Lokey provided</p> <p>23 these services?</p> <p>24 A I'm not aware.</p> <p>25 Q Would you dispute that HCMFA is the entity</p>
<p>Page 112</p> <p>1 Dustin Norris</p> <p>2 that retained Houlihan Lokey?</p> <p>3 A I don't know.</p> <p>4 Q Would you agree that Houlihan Lokey is</p> <p>5 fairly described as an independent third-party</p> <p>6 valuation consultant?</p> <p>7 A Yes, generally.</p> <p>8 Q Okay. And do you know when Houlihan Lokey</p> <p>9 was retained?</p> <p>10 A I don't.</p> <p>11 Q Houlihan Lokey's retention was approved by</p> <p>12 the retail board, wasn't it?</p> <p>13 A I'm not sure.</p> <p>14 Q Have you ever seen any of the work product</p> <p>15 of Houlihan Lokey in connection with the TerreStar</p> <p>16 valuation?</p> <p>17 A Yeah. I remember seeing the valuation</p> <p>18 model.</p> <p>19 Q So Houlihan Lokey did prepare the</p> <p>20 valuation model that is the subject of the</p> <p>21 TerreStar valuation issue; is that fair?</p> <p>22 A Working very closely with the HCMLP</p> <p>23 employees with the inputs, yes.</p> <p>24 Q Did HCMFA rely on the Houlihan Lokey</p> <p>25 valuation model?</p>	<p>Page 113</p> <p>1 Dustin Norris</p> <p>2 A I'm not sure.</p> <p>3 Q Does HCMFA contend that Houlihan Lokey</p> <p>4 made any mistakes in connection with its valuation</p> <p>5 services?</p> <p>6 A I'm not sure.</p> <p>7 Q Does HCMFA have a position as to whether</p> <p>8 or not Houlihan Lokey made any mistakes in any of</p> <p>9 the services that it performed in connection with</p> <p>10 the TerreStar valuation?</p> <p>11 A I think they don't have details and would</p> <p>12 retain their rights to understand what their role</p> <p>13 and – sorry. What was the original question?</p> <p>14 Q Just whether HCMFA has a position as to</p> <p>15 whether or not Houlihan Lokey made any mistakes in</p> <p>16 the work that it did in connection with the</p> <p>17 TerreStar valuation?</p> <p>18 A Yeah. I think they're retaining their</p> <p>19 rights to understand that better.</p> <p>20 Q Is there any agreement with Houlihan Lokey</p> <p>21 that would give HCMFA the time to do that? Is</p> <p>22 there a tolling agreement or anything like that?</p> <p>23 A Not that I'm aware of.</p> <p>24 Q Is HCMFA undertaking any analysis to</p> <p>25 determine whether or not Houlihan Lokey made any</p>

<p>Page 114</p> <p>1 Dustin Norris</p> <p>2 mistakes in connection with the work that it did</p> <p>3 on the TerreStar valuation?</p> <p>4 A Sorry. One more time.</p> <p>5 Q Is HCMFA undertaking any analysis or</p> <p>6 investigation to try to determine whether Houlihan</p> <p>7 Lokey made any mistakes?</p> <p>8 A There are – I don't know. I don't know.</p> <p>9 Q You have no knowledge, as you sit here</p> <p>10 today, as to whether HCMFA is undertaking any</p> <p>11 analysis or investigation to try to determine</p> <p>12 whether Houlihan Lokey did anything wrong in</p> <p>13 connection with its valuation services; correct?</p> <p>14 A And I wasn't prepared – I don't think</p> <p>15 this is one of the topics – you know, Houlihan</p> <p>16 Lokey's, you know, involvement, and so I wasn't</p> <p>17 prepared to answer that one.</p> <p>18 Q Okay. Well, the defense – HCMFA's</p> <p>19 defense is that Highland is responsible for the</p> <p>20 TerreStar valuation issue; correct?</p> <p>21 A Yes.</p> <p>22 Q And there's no question that Houlihan</p> <p>23 Lokey provided services in connection with that</p> <p>24 valuation; correct?</p> <p>25 A Correct.</p>	<p>Page 115</p> <p>1 Dustin Norris</p> <p>2 Q But HCMFA has not undertaken any analysis</p> <p>3 or investigation, to the best of your knowledge,</p> <p>4 to try to determine if Houlihan Lokey was the</p> <p>5 responsible party; fair?</p> <p>6 A We don't know if there is a contract or</p> <p>7 not. At this point, we're talking about the</p> <p>8 defense of Highland's responsibility. There's no</p> <p>9 question they were responsible for the valuations.</p> <p>10 They were outsource provider of the valuation</p> <p>11 committee. Every individual working and</p> <p>12 coordinating with Houlihan Lokey was an HCMFA</p> <p>13 employee. All the data and information that was</p> <p>14 provided to them came from HCMLP. There's no</p> <p>15 question that Highland was responsible for the NAV</p> <p>16 error. No one ever questioned that. That was</p> <p>17 always known. It was all the employees that were</p> <p>18 involved.</p> <p>19 MR. RUKAVINA: John, I'll just</p> <p>20 reiterate that we did not understand your</p> <p>21 topics to include Houlihan Lokey. If you</p> <p>22 need more information about that or if we</p> <p>23 need to have a supplemental deposition,</p> <p>24 that's fine. But this is just not</p> <p>25 something that we reasonably anticipated</p>
<p>Page 116</p> <p>1 Dustin Norris</p> <p>2 you asking about.</p> <p>3 MR. MORRIS: I think it's – I</p> <p>4 think I have the answer that I need and</p> <p>5 that the executive vice president and</p> <p>6 30(b)(6) witness has no knowledge of any</p> <p>7 investigation or analysis that has been</p> <p>8 undertaken by HCMFA to try to even</p> <p>9 determine whether Houlihan Lokey is at</p> <p>10 fault.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q Do I have that right, Mr. Norris?</p> <p>13 MR. RUKAVINA: Well, I will just</p> <p>14 object that that was not your prior</p> <p>15 question.</p> <p>16 MR. MORRIS: All right. Well,</p> <p>17 that's my question now.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q Is that correct, Mr. Norris?</p> <p>20 A I know there's been discussion with</p> <p>21 counsel.</p> <p>22 MR. RUKAVINA: Well, I will</p> <p>23 represent to you that we have looked for a</p> <p>24 Houlihan Lokey contract and have not been</p> <p>25 able to find one. Otherwise, we would</p>	<p>Page 117</p> <p>1 Dustin Norris</p> <p>2 have produced it to you. So if you have</p> <p>3 anything like that, we'd love to see it.</p> <p>4 We do not even know whether we had a</p> <p>5 contract with Houlihan Lokey or not. So</p> <p>6 we'll try to find you information, John.</p> <p>7 We just – we just don't have it.</p> <p>8 MR. MORRIS: We'll get to that in a</p> <p>9 moment.</p> <p>10 BY MR. MORRIS:</p> <p>11 Q Has HCMFA – withdrawn.</p> <p>12 Has HCMFA ever told Houlihan Lokey</p> <p>13 that it believed it made any mistake or error of</p> <p>14 any kind in connection with its work on the</p> <p>15 TerreStar valuation?</p> <p>16 A Again, I – this is not a topic that we</p> <p>17 reviewed, so I don't know.</p> <p>18 Q Okay. You're not aware of anything today;</p> <p>19 correct?</p> <p>20 A Again, the employees working with Houlihan</p> <p>21 Lokey were the HCMLP employees. So I don't know</p> <p>22 if the debtor employees have that conversation,</p> <p>23 but –</p> <p>24 MR. MORRIS: Yeah, I'm going to</p> <p>25 move to strike.</p>

<p style="text-align: right;">Page 118</p> <p>1 Dustin Norris</p> <p>2 BY MR. MORRIS:</p> <p>3 Q And I'm asking about HCMFA.</p> <p>4 Did – has HCMFA ever informed</p> <p>5 Houlihan Lokey that HCMFA believes that Houlihan</p> <p>6 Lokey made a mistake or error in the work that it</p> <p>7 did?</p> <p>8 A There were ongoing discussions extensively</p> <p>9 throughout this with Houlihan Lokey and the debtor</p> <p>10 employees regarding the error and what the causes</p> <p>11 were. It was extensive discussions.</p> <p>12 MR. MORRIS: Okay. Move to strike.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q Has HCMFA ever told Houlihan Lokey that</p> <p>15 HCMFA believes that Houlihan Lokey made a mistake</p> <p>16 or an error in connection with its valuation</p> <p>17 services?</p> <p>18 A It may have, but I'm not aware.</p> <p>19 Q Thank you.</p> <p>20 Are you familiar with the report that</p> <p>21 HCMFA prepared and sent to the Global Allocation</p> <p>22 Fund concerning the TerreStar valuation issues?</p> <p>23 A They sent to the fund?</p> <p>24 Q Uh-huh.</p> <p>25 A What do you mean "they sent to the fund"?</p>	<p style="text-align: right;">Page 119</p> <p>1 Dustin Norris</p> <p>2 Q They sent to the board of the fund?</p> <p>3 A Oh, the board of the fund.</p> <p>4 There were a number of memos and</p> <p>5 presentations. If you have one you want to pull</p> <p>6 up, you can – we can refer to it.</p> <p>7 Q Sure.</p> <p>8 MR. MORRIS: Let's put up what</p> <p>9 we've marked as Exhibit 182.</p> <p>10 (Exhibit 182 tendered.)</p> <p>11 BY MR. MORRIS:</p> <p>12 Q And while we're doing that, have you ever</p> <p>13 seen a single document anywhere at any time in</p> <p>14 which any representative of HCMFA took Highland to</p> <p>15 task for the work that it did in connection with</p> <p>16 the TerreStar valuation?</p> <p>17 A "Took them to task"? Define "take them to</p> <p>18 task."</p> <p>19 Q Told them that they were the source and</p> <p>20 cause of the NAV error.</p> <p>21 A The irony of all of the reporting to the</p> <p>22 board, all of the valuation knowledge was from</p> <p>23 HCMLP's employees. We – we outsourced that to</p> <p>24 them. There was – there was no question that</p> <p>25 they were at fault, and that's – every employee</p>
<p style="text-align: right;">Page 120</p> <p>1 Dustin Norris</p> <p>2 involved was an HCMLP employee.</p> <p>3 MR. MORRIS: I move to strike.</p> <p>4 BY MR. MORRIS:</p> <p>5 Q And I'm going to ask you, sir, to listen</p> <p>6 carefully to my question.</p> <p>7 Have you ever seen a document that</p> <p>8 HCMFA sent to Highland in which HCMFA accused</p> <p>9 Highland of being the cause of the NAV error?</p> <p>10 A I have not.</p> <p>11 Q Thank you.</p> <p>12 Do you see the document that's on the</p> <p>13 screen?</p> <p>14 A I do.</p> <p>15 Q Before I get to that, so the NAV error</p> <p>16 occurred sometime prior to May 2019; correct?</p> <p>17 A Beginning – I don't know the specific</p> <p>18 dates. I believe it began in May of 2019 –</p> <p>19 sorry. May 2019 –</p> <p>20 Q That's when it ended; right?</p> <p>21 A What's that?</p> <p>22 Q That's when it ended; right? That's –</p> <p>23 A Yeah, it was before May 2019.</p> <p>24 Q Okay. So during the entire time that the</p> <p>25 TerreStar NAV error was being discussed and</p>	<p style="text-align: right;">Page 121</p> <p>1 Dustin Norris</p> <p>2 analyzed and debated and communications with the</p> <p>3 SEC, during that entire period, Jim Dondero was in</p> <p>4 control of both HCMFA and Highland; correct?</p> <p>5 A Yes, I believe so.</p> <p>6 Q Okay. Can you identify any employee of</p> <p>7 Highland who was fired as a result of any of the</p> <p>8 mistakes that were made in connection with the</p> <p>9 TerreStar valuation?</p> <p>10 A No.</p> <p>11 Q Can you identify –</p> <p>12 A Not that I can remember.</p> <p>13 Q Can you identify any steps that</p> <p>14 Mr. Dondero took against any employee who was</p> <p>15 allegedly involved in the NAV error?</p> <p>16 A That would have been an HCMLP matter. I</p> <p>17 don't have any knowledge of HCMLP's hiring or</p> <p>18 firing practices.</p> <p>19 Q Okay. So at no time did anybody ever tell</p> <p>20 you that any disciplinary measures were imposed</p> <p>21 upon any Highland employee as a result of the NAV</p> <p>22 error that Highland allegedly caused; correct?</p> <p>23 A Any firing practice? Is that what you</p> <p>24 said?</p> <p>25 Q Disciplinary. Firing. Anything.</p>

<p>Page 122</p> <p>1 Dustin Norris</p> <p>2 A There was a remediation process that had</p> <p>3 to go into effect, which was improvement of</p> <p>4 controls, and they maybe even hired additional</p> <p>5 people. But it was – and I don't – I'm not</p> <p>6 aware of any disciplinary, but there could have</p> <p>7 been.</p> <p>8 Q Okay. But that would just be speculation</p> <p>9 on your part; correct?</p> <p>10 A Yeah.</p> <p>11 Q So have you seen the document that's up on</p> <p>12 the screen?</p> <p>13 A I have.</p> <p>14 Q Did you read it before it was sent?</p> <p>15 A I don't think so.</p> <p>16 Q Did anybody – did any officer or employee</p> <p>17 take responsibility for making sure that –</p> <p>18 withdrawn.</p> <p>19 What is this document?</p> <p>20 A It is titled "Resolution of the Funds Net</p> <p>21 Asset Value Error."</p> <p>22 Q And was – is it your understanding that</p> <p>23 the purpose of this document was to enable HCMFA</p> <p>24 to explain to the Global Allocation Fund how the</p> <p>25 resolution of the NAV error was being conducted?</p>	<p>Page 123</p> <p>1 Dustin Norris</p> <p>2 A Not to the Global Allocation Fund. This</p> <p>3 is a memo to the board.</p> <p>4 Q Thank you for the clarification.</p> <p>5 Subject to that clarification, is my</p> <p>6 description otherwise correct?</p> <p>7 A I believe so. There had been a number of</p> <p>8 communications with the board, and this is the</p> <p>9 resolution of the whole process, or most of the</p> <p>10 process.</p> <p>11 Q This was a pretty big issue for HCMFA,</p> <p>12 wasn't it?</p> <p>13 A There was a lot of people involved. It</p> <p>14 was – there was a lot of involvement from –</p> <p>15 mostly Highland Capital Management, LP, employees,</p> <p>16 but it was – there was a lot involved.</p> <p>17 Q And who – what outside counsel was</p> <p>18 retained?</p> <p>19 A Adviser counsel is counsel – is – I</p> <p>20 believe it was K&L Gates for HCMFA.</p> <p>21 Q And who was Highland's counsel?</p> <p>22 A I don't know.</p> <p>23 Q Do you know if Highland had counsel?</p> <p>24 A I don't know.</p> <p>25 Q Do you –</p>
<p>Page 124</p> <p>1 Dustin Norris</p> <p>2 A I know they had counsel they referred to</p> <p>3 for SEC matters, and I don't know if they utilized</p> <p>4 them here or not. They were all Highland</p> <p>5 employees that worked on this. So I'm sure you</p> <p>6 probably have that in your records.</p> <p>7 Q Sir, can you identify any outside counsel</p> <p>8 that was retained by Highland to advise it in</p> <p>9 connection with the TerreStar valuation issues</p> <p>10 that were the subject of an SEC investigation?</p> <p>11 A I have – I have no knowledge of that.</p> <p>12 Q Okay. Did you see this memo that's up on</p> <p>13 the screen that's been marked as Exhibit 182 prior</p> <p>14 to the time that it was sent?</p> <p>15 A I don't recall.</p> <p>16 Q The NAV error was the subject of an SEC</p> <p>17 investigation; correct?</p> <p>18 A Correct.</p> <p>19 Q Do you know if HCMFA ever told the SEC</p> <p>20 orally, in writing, or otherwise that Highland</p> <p>21 Capital Management, LP, was the cause of the NAV</p> <p>22 error?</p> <p>23 A Not that I'm aware of, but they were</p> <p>24 concerned about the ultimate correction of the NAV</p> <p>25 error. I don't think they were concerned about</p>	<p>Page 125</p> <p>1 Dustin Norris</p> <p>2 the responsible party.</p> <p>3 But I would say every single person</p> <p>4 that interacted with the SEC, I believe, were</p> <p>5 HCMLP employees. We can see that on the other</p> <p>6 memo that they have to the SEC following up on a</p> <p>7 call; all HCMLP employees. So whether they told</p> <p>8 them or not, they were all HCMLP employees.</p> <p>9 MR. MORRIS: Okay. Move to strike</p> <p>10 after the very first portion of the answer</p> <p>11 that was responsive.</p> <p>12 BY MR. MORRIS:</p> <p>13 Q Did anybody – did any officer or employee</p> <p>14 of HCMFA ever inform the SEC that Highland Capital</p> <p>15 Management, LP, was the responsible party for the</p> <p>16 NAV error?</p> <p>17 A Specifically, not that I'm aware of.</p> <p>18 Q Okay. Was any HCMFA officer or employee</p> <p>19 responsible for making sure that the memorandum up</p> <p>20 on the screen that's been marked as 182 was true</p> <p>21 and accurate before it was sent to the board of</p> <p>22 the Highland Global Allocation Fund?</p> <p>23 A I don't know that there is a – there's a</p> <p>24 specific requirement of an officer to verify the</p> <p>25 accuracy.</p>

<p>Page 126</p> <p>1 Dustin Norris</p> <p>2 Q Okay. But my question was a little bit</p> <p>3 broader, and that was whether there was any</p> <p>4 officer or employee who was given the</p> <p>5 responsibility of making sure this document was</p> <p>6 true and accurate before it was sent to the board</p> <p>7 of the GAF.</p> <p>8 A I don't even know who drafted this. It</p> <p>9 would have come from Highland's compliance legal</p> <p>10 and accounting team with all the expertise around</p> <p>11 the NAV error and all of those that were involved.</p> <p>12 Q So did you see this document at or around</p> <p>13 the time it was sent to the GAF board?</p> <p>14 A I probably did.</p> <p>15 Q Do you recall telling anybody at that time</p> <p>16 that you believed there were any errors in the</p> <p>17 document?</p> <p>18 A I think, as I testified before, I</p> <p>19 don't – I don't remember reading it. But I</p> <p>20 didn't – I didn't say there were errors in the</p> <p>21 document, no.</p> <p>22 Q Prior to the answer date of March 1st,</p> <p>23 2021, did anybody acting on behalf of HCMFA ever</p> <p>24 tell anybody in the world at any time that there</p> <p>25 was any error in this memorandum?</p>	<p>Page 127</p> <p>1 Dustin Norris</p> <p>2 A Not that I'm aware of.</p> <p>3 Q Did HCMFA send this memorandum –</p> <p>4 withdrawn.</p> <p>5 Did HCMFA intend this – withdrawn.</p> <p>6 Did HCMFA expect the GAF board to rely</p> <p>7 on this memorandum?</p> <p>8 A I don't know what the intention was.</p> <p>9 Q You don't know what HCMFA's intention was</p> <p>10 in sending this memorandum?</p> <p>11 A If it's addressed to the board, it could</p> <p>12 be to educate. But I'm sure that the board</p> <p>13 would – would rely on or expect that that memo</p> <p>14 would be accurate.</p> <p>15 Q Okay. And this is dated after all of the</p> <p>16 payments have been made that we've been talking</p> <p>17 about, the May 2nd and the May 3rd payments;</p> <p>18 correct?</p> <p>19 A Correct.</p> <p>20 Q Take a look at the second paragraph.</p> <p>21 A Yup.</p> <p>22 Q Do you see the first sentence refers to</p> <p>23 two initial determinations that were made by the</p> <p>24 adviser and Houlihan Lokey?</p> <p>25 A Sorry. Which part? Just the first</p>
<p>Page 128</p> <p>1 Dustin Norris</p> <p>2 sentence of the second paragraph?</p> <p>3 Q Yeah. First of all, do you see that the</p> <p>4 second paragraph refers to the adviser and</p> <p>5 Houlihan Lokey?</p> <p>6 A It does.</p> <p>7 Q And do you see that the reference to</p> <p>8 Houlihan Lokey includes a reference to Houlihan</p> <p>9 Lokey having been approved by the board?</p> <p>10 A Yes.</p> <p>11 Q And do you understand that that means the</p> <p>12 board of GAF?</p> <p>13 A Yes.</p> <p>14 Q Does that refresh your recollection that</p> <p>15 the GAF board approved of the retention of</p> <p>16 Houlihan Lokey as an independent third-party</p> <p>17 expert valuation consultant?</p> <p>18 A It doesn't refresh my recollection, but it</p> <p>19 says it there. I don't know that I have a</p> <p>20 document saying they – I haven't seen the</p> <p>21 approval, the agreement.</p> <p>22 Q But you don't dispute that this memo was</p> <p>23 sent to the GAF board on or about May 28th, 2019;</p> <p>24 correct?</p> <p>25 A Correct.</p>	<p>Page 129</p> <p>1 Dustin Norris</p> <p>2 Q Okay. And HCMFA told the GAF board at</p> <p>3 that time that HCMFA and Houlihan Lokey, quote,</p> <p>4 "initially determined that the March transactions</p> <p>5 were non-orderly and should be given zero</p> <p>6 weighting for purposes of fair value."</p> <p>7 Is that correct?</p> <p>8 A The HCMFP, as part of the valuation – or</p> <p>9 as the outsource valuation provider, were the</p> <p>10 employees that made that determination. The</p> <p>11 adviser ultimately has the responsibility, but it</p> <p>12 was outsourced. And those were HCMFP employees,</p> <p>13 along with Houlihan Lokey, that determined the</p> <p>14 March transactions were non-orderly.</p> <p>15 MR. MORRIS: I'm going to move to</p> <p>16 strike.</p> <p>17 BY MR. MORRIS:</p> <p>18 Q And I'm going to ask you to listen</p> <p>19 carefully to my question.</p> <p>20 I'm asking you what HCMFA told the GAF</p> <p>21 board. Did HCMFA tell the GAF board on May 28th,</p> <p>22 2019, that HCMFA and Houlihan Lokey, quote,</p> <p>23 "initially determined that the March transactions</p> <p>24 were non-orderly and should be given zero</p> <p>25 weighting for purposes of determining fair value."</p>

<p style="text-align: right;">Page 130</p> <p>1 Dustin Norris</p> <p>2 Is that correct?</p> <p>3 A The – in the memo, it says that on this</p> <p>4 date, there were many other conversations probably</p> <p>5 around this date and on this date discussing the</p> <p>6 determinations and non-orderly and that it was the</p> <p>7 HCMLP employees, and the board knew that. They</p> <p>8 were very aware that it was the – the valuation</p> <p>9 control environment of HCMLP that determined these</p> <p>10 were non-orderly transactions.</p> <p>11 Q So this – so this report is inaccurate,</p> <p>12 according to you?</p> <p>13 A No. There's – there's just – your</p> <p>14 question was did they tell the board. There is a</p> <p>15 lot that we told the board outside of this memo.</p> <p>16 This memo does say advised from Houlihan Lokey.</p> <p>17 The adviser is ultimately responsible. But there</p> <p>18 was a lot of communication with the board –</p> <p>19 Q Okay.</p> <p>20 A – around this, that they knew exactly who</p> <p>21 was responsible for valuation as the board</p> <p>22 determining that these were market transactions</p> <p>23 and orderly or non-orderly.</p> <p>24 Q Okay. I want to focus on this memo,</p> <p>25 because this is the one that I have. And you'll</p>	<p style="text-align: right;">Page 131</p> <p>1 Dustin Norris</p> <p>2 agree with me that there's no reference to</p> <p>3 Highland Capital Management, LP, anywhere in this</p> <p>4 report; correct?</p> <p>5 A No, there's not, but the board knew that</p> <p>6 HCMLP was preparing the valuations.</p> <p>7 MR. MORRIS: All right. I move to</p> <p>8 strike after the word "no."</p> <p>9 BY MR. MORRIS:</p> <p>10 Q And it was the determination concerning</p> <p>11 whether or not it was orderly or non-orderly, and</p> <p>12 whether or not to use zero weighting that were the</p> <p>13 two causes of the NAV error; correct?</p> <p>14 A Those were key portions.</p> <p>15 Q In the last sentence, in fact, that's the</p> <p>16 only portions; isn't that fair?</p> <p>17 A "Initially determined" – well, it doesn't</p> <p>18 say that there's not other factors. They're the</p> <p>19 only ones mentioned.</p> <p>20 Q Let me – let me – let me read the last</p> <p>21 sentence.</p> <p>22 Quote: "The orderly determination and</p> <p>23 adoption of the weighted fair value methodology</p> <p>24 resulted in NAV errors in the fund," and that's</p> <p>25 what it's defining as the NAV error.</p>
<p style="text-align: right;">Page 132</p> <p>1 Dustin Norris</p> <p>2 Have I read that correctly?</p> <p>3 A You did.</p> <p>4 Q And so would you agree with me, as HCMFA's</p> <p>5 30(b)(6) witness, that on May 28th, 2019, HCMFA</p> <p>6 told the GAF board that the two causes of the NAV</p> <p>7 error were the orderly determination and the</p> <p>8 adoption of the weighted fair value methodology –</p> <p>9 fair value – fair valuation methodology?</p> <p>10 A Those were – it doesn't say those are</p> <p>11 exclusively the only factors, but those are</p> <p>12 mentioned here.</p> <p>13 Q It says those two factors resulted in the</p> <p>14 NAV error; correct?</p> <p>15 A Those – no, it didn't say "the NAV</p> <p>16 error." It said "in NAV errors."</p> <p>17 Q Which it's defining as the NAV error;</p> <p>18 correct?</p> <p>19 A Defines as "the NAV error."</p> <p>20 Q Okay. Does HCMFA contend that there's</p> <p>21 anything in this paragraph that is inaccurate?</p> <p>22 A Again, I – I don't know that Houlihan</p> <p>23 Lokey was approved by the board, but I don't know</p> <p>24 of any other contention.</p> <p>25 Q Okay. And you don't – and HCMFA doesn't</p>	<p style="text-align: right;">Page 133</p> <p>1 Dustin Norris</p> <p>2 dispute that Houlihan Lokey was approved by the</p> <p>3 board. You're just telling me that, as you sit</p> <p>4 here today, that's the one fact that you've not</p> <p>5 been able to confirm; is that fair?</p> <p>6 A As far as I know, yeah.</p> <p>7 Q Okay. Let's go on to the next paragraph.</p> <p>8 MR. MORRIS: If we could just</p> <p>9 scroll up a little bit.</p> <p>10 BY MR. MORRIS:</p> <p>11 Q I'm going to try and summarize here, but</p> <p>12 if you don't think it's a fair summary, of course</p> <p>13 I would encourage you to let me know.</p> <p>14 Is it fair to say that, as a general</p> <p>15 matter, the next paragraph describes a total loss</p> <p>16 from the NAV error as being approximately</p> <p>17 \$7.5 million?</p> <p>18 A Yeah, including processing costs and</p> <p>19 rebates and offsets, yes.</p> <p>20 Q Right. That's what the parenthetical</p> <p>21 says, a total loss –</p> <p>22 A Yup.</p> <p>23 Q – of approximately \$7.5 million?</p> <p>24 A Correct.</p> <p>25 Q And the next paragraph states that that</p>

<p>Page 134</p> <p>1 Dustin Norris</p> <p>2 loss was funded with two payments. Do I have that</p> <p>3 correct in the first sentence?</p> <p>4 A Correct.</p> <p>5 Q Okay. Did HCMFA pay approximately</p> <p>6 \$5.186 million on or around February 15, 2019, in</p> <p>7 connection with the NAV error?</p> <p>8 A I believe so.</p> <p>9 And if we go to the next page, it has</p> <p>10 dates and payments. I think it's represented</p> <p>11 there.</p> <p>12 Q Okay. Where did HCMFA get the money to</p> <p>13 make that payment?</p> <p>14 A A combination of insurance proceeds and</p> <p>15 cash that it had. And, again, that's detailed, I</p> <p>16 believe, on the next page.</p> <p>17 Q HCMFA contends that the \$7.4 million</p> <p>18 transferred by Highland to HCMFA was mistakenly</p> <p>19 recorded as a loan; correct?</p> <p>20 A There's – there's two different amounts</p> <p>21 that we contend were recorded as a note, a</p> <p>22 combined 7.4 million, yes.</p> <p>23 Q Okay. And HCMFA contends that the</p> <p>24 \$7.4 million in payments was not to be a loan, but</p> <p>25 was supposed to be compensation for Highland's</p>	<p>Page 135</p> <p>1 Dustin Norris</p> <p>2 negligent valuation services in connection with</p> <p>3 the NAV error; correct?</p> <p>4 A Sorry. One more time.</p> <p>5 Q HCMFA contends that the \$7.4 million in</p> <p>6 payments was supposed to be compensation resulting</p> <p>7 from Highland's negligent valuation services;</p> <p>8 correct?</p> <p>9 A Yes, subject to all of our defenses that</p> <p>10 we've laid out in our pleadings.</p> <p>11 Q Okay. When did HCMFA reach the conclusion</p> <p>12 that Highland was the cause of the NAV error?</p> <p>13 A The – there was never – I don't think</p> <p>14 there was ever a question. It was always known</p> <p>15 that HCMLP employees were the ones creating the</p> <p>16 valuation, overseeing the valuation, working with</p> <p>17 the value – you know, everything that was done</p> <p>18 was outsourced to HCMLP.</p> <p>19 And so it was discussed with the</p> <p>20 board. It was discussed in-depth internally. The</p> <p>21 employees were all HCMLP employees. So I can't</p> <p>22 pinpoint a date, but there – it was a known</p> <p>23 factor that HCMLP was responsible.</p> <p>24 MR. MORRIS: Okay. I move to</p> <p>25 strike.</p>
<p>Page 136</p> <p>1 Dustin Norris</p> <p>2 BY MR. MORRIS:</p> <p>3 Q The only thing I'm asking you for is a</p> <p>4 date. And if you don't know, the answer is "I</p> <p>5 don't know." So let me try one more time.</p> <p>6 Do you know when HCMFA first</p> <p>7 determined that Highland was negligent?</p> <p>8 A I don't know the first date.</p> <p>9 Q Do you know if it was in 2018 or 2019?</p> <p>10 A I don't know.</p> <p>11 Q Do you know when the NAV error first –</p> <p>12 was first identified?</p> <p>13 A I believe the NAV error was determined in</p> <p>14 early 2019.</p> <p>15 Q Was it before or after – I mean, the –</p> <p>16 the NAV error must have been identified before</p> <p>17 February 15, 2019; correct?</p> <p>18 A Correct.</p> <p>19 Q Okay.</p> <p>20 A Well, I should say whether there – I</p> <p>21 don't know. I don't remember – we'll have to</p> <p>22 look through the documents – what the actual –</p> <p>23 oh, you're saying before February 15th. Yes,</p> <p>24 that's when the paid insurance proceeds came in.</p> <p>25 So yes.</p>	<p>Page 137</p> <p>1 Dustin Norris</p> <p>2 Q No question – no question that HCMFA knew</p> <p>3 before February 15, 2019, that there was a NAV</p> <p>4 error; correct?</p> <p>5 A Correct.</p> <p>6 Q No question that HCMFA knew before</p> <p>7 February 15, 2019, that the NAV error was caused</p> <p>8 by Highland; correct?</p> <p>9 A Yeah. Like I said, it was always known</p> <p>10 that these were Highland employees that were</p> <p>11 outsourced through the valuation, and they were</p> <p>12 the ones at fault.</p> <p>13 Q Okay. Do you know if – if HCMFA ever</p> <p>14 demanded compensation from Highland for any errors</p> <p>15 or mistakes it may have made in connection with</p> <p>16 the TerreStar valuation?</p> <p>17 A Yeah. Mr. Dondero told Frank to make the</p> <p>18 payments to compensate for the NAV error.</p> <p>19 Q And did he do that in his capacity as the</p> <p>20 person in control of HCMFA, or did he do that in</p> <p>21 his capacity as the person in control of Highland?</p> <p>22 A I would imagine it would have been both.</p> <p>23 Further supported, he transferred money – of his</p> <p>24 own money to HCMLP to then pay HCMFA. And so</p> <p>25 he – yes, he was on both sides of it, but he had</p>

<p>Page 138</p> <p>1 Dustin Norris</p> <p>2 the authority on both sides to make that decision.</p> <p>3 Q Okay. And so Mr. Dondero reached an</p> <p>4 agreement with himself pursuant to which HCMFA</p> <p>5 demanded and Highland agreed to pay the</p> <p>6 \$7.4 million as a consequence of Highland's</p> <p>7 negligent conduct in the performance of its</p> <p>8 valuation services. Do I have that right?</p> <p>9 A Sounds like there's a legal determination</p> <p>10 there that needs to be made. I --</p> <p>11 Q It's a factual one, I promise.</p> <p>12 A Entering -- whether entering into an</p> <p>13 agreement or not, I -- that seems like a legal</p> <p>14 determination. But maybe ask the question again.</p> <p>15 Q Did somebody on behalf of Highland agree</p> <p>16 to pay HCMFA \$7.4 million in order to compensate</p> <p>17 HCMFA for Highland's negligent services in</p> <p>18 connection with the TerreStar valuation?</p> <p>19 A Yes. Mr. Dondero.</p> <p>20 Q Thank you.</p> <p>21 Is there any document anywhere that</p> <p>22 you have ever seen that reflects Highland's</p> <p>23 agreement to pay \$7.4 million as compensation to</p> <p>24 HCMFA?</p> <p>25 A I haven't seen a settlement agreement or</p>	<p>Page 139</p> <p>1 Dustin Norris</p> <p>2 an agreement to that effect, no.</p> <p>3 Q You haven't seen anything; correct?</p> <p>4 A No.</p> <p>5 Q Have you looked?</p> <p>6 A We have. I actually wouldn't be</p> <p>7 surprised -- I would be surprised to see one. And</p> <p>8 it's -- my understanding is -- and the company's</p> <p>9 position is that there doesn't need to be an</p> <p>10 agreement. Right? We --</p> <p>11 Q I'm not asking -- I'm going to interrupt</p> <p>12 you again. I'm not asking you --</p> <p>13 MR. RUKAVINA: Well, John --</p> <p>14 MR. MORRIS: -- anything like that.</p> <p>15 I need him to answer my questions or we're</p> <p>16 going to be here all night.</p> <p>17 MR. RUKAVINA: John, hold on.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q Have you ever -- have you ever seen</p> <p>20 anything --</p> <p>21 MR. RUKAVINA: John, hold on. Hold</p> <p>22 on.</p> <p>23 MR. MORRIS: No, no. Davor,</p> <p>24 please -- please --</p> <p>25 MR. RUKAVINA: John, it is not our</p>
<p>Page 140</p> <p>1 Dustin Norris</p> <p>2 position -- it is not -- it is our</p> <p>3 position that there is no settlement</p> <p>4 agreement.</p> <p>5 MR. MORRIS: Thank you very much.</p> <p>6 BY MR. MORRIS:</p> <p>7 Q Is it your position that there is any</p> <p>8 document of any kind that reflects Highland's</p> <p>9 agreement to pay \$7.4 million as compensation?</p> <p>10 A No. Subject to our defenses, but there's</p> <p>11 none.</p> <p>12 Q Did Mr. Dondero tell Mr. Waterhouse that</p> <p>13 the money that he was asking to be transferred</p> <p>14 from Highland to HCMFA be transferred as</p> <p>15 compensation for the NAV error?</p> <p>16 A Our position is that this was compensation</p> <p>17 for the NAV error, and that was discussed.</p> <p>18 Mr. Dondero told Frank. And I believe Frank even</p> <p>19 testified to that, and Mr. Dondero testified to</p> <p>20 that in their depositions.</p> <p>21 Q Okay. Now, you said that the February</p> <p>22 payment of over \$5 million was funded through</p> <p>23 insurance proceeds and cash.</p> <p>24 Do I have that right?</p> <p>25 A Yes.</p>	<p>Page 141</p> <p>1 Dustin Norris</p> <p>2 Q And the cash portion was really just the</p> <p>3 deductible?</p> <p>4 A If you want to go to Page 2, we can look</p> <p>5 at the details.</p> <p>6 Q Sure. Sure.</p> <p>7 A I don't have it all by memory.</p> <p>8 Q That's fair.</p> <p>9 MR. MORRIS: Let's go to the next</p> <p>10 page.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q Looking at this, do the third and fourth</p> <p>13 lines refresh your recollection --</p> <p>14 A Yes.</p> <p>15 Q -- that the February payment was funded</p> <p>16 through insurance proceeds and an insurance</p> <p>17 deductible paid by the adviser?</p> <p>18 A Yes, I believe that's correct.</p> <p>19 Q Okay. And Topic Number 8 on the 30(b)(6)</p> <p>20 notice relates to the insurance claim; right?</p> <p>21 A Uh-huh.</p> <p>22 Q Okay. Did you do anything to familiarize</p> <p>23 yourself with the insurance claim?</p> <p>24 A I did.</p> <p>25 Q And what did you do to familiarize</p>

<p>Page 142</p> <p>1 Dustin Norris</p> <p>2 yourself with the insurance claim?</p> <p>3 A I discussed with DC and Davor the</p> <p>4 company's position on the insurance claim.</p> <p>5 Q Okay. I don't want to know what the</p> <p>6 company's position is. I want to know what the</p> <p>7 facts are.</p> <p>8 Did you learn any facts in connection</p> <p>9 with your diligence and your preparation to answer</p> <p>10 topic – questions on Topic Number 8?</p> <p>11 A Yeah. The HCMFA policy was – was – the</p> <p>12 HCMFA – HCMFA had an insurance policy with ICI</p> <p>13 Mutual; and based on the NAV error, the policy</p> <p>14 was – I don't know what the word is – was used</p> <p>15 to seek reimbursement for the NAV error.</p> <p>16 Q Okay. So –</p> <p>17 (Reporter discussion off the record.)</p> <p>18 BY MR. MORRIS:</p> <p>19 Q So did HCMFA file a claim for insurance</p> <p>20 coverage with ICI Mutual in connection with the</p> <p>21 NAV error?</p> <p>22 A The HCMLP employees, I believe, through</p> <p>23 Frank Waterhouse and his team, did that. They –</p> <p>24 they managed the insurance as part of the shared</p> <p>25 services agreement, and they filed with the</p>	<p>Page 143</p> <p>1 Dustin Norris</p> <p>2 insurance company –</p> <p>3 Q And – and the filing –</p> <p>4 A – on behalf of HCMFA.</p> <p>5 Q And the filing that was made, was that a</p> <p>6 claim that was made on behalf of HCMFA?</p> <p>7 A I believe so, yes.</p> <p>8 Q And did HCMFA authorize the filing of that</p> <p>9 claim?</p> <p>10 A Our position is that that – that is a</p> <p>11 valid claim from HCMFA.</p> <p>12 Q All right. Did HCMFA authorize the filing</p> <p>13 of the insurance claim?</p> <p>14 A I – I don't know.</p> <p>15 Q Did – has HCMFA ever told anybody at any</p> <p>16 time that the insurance claim was not authorized</p> <p>17 by HCMFA?</p> <p>18 A No.</p> <p>19 Q And HCMFA received almost \$5 million on</p> <p>20 account of the claim; right?</p> <p>21 A Correct.</p> <p>22 Q And HCMFA wanted to recover on its</p> <p>23 insurance claim; correct?</p> <p>24 A Yes.</p> <p>25 Q Did the claim – was the claim made in</p>
<p>Page 144</p> <p>1 Dustin Norris</p> <p>2 writing?</p> <p>3 A I believe so.</p> <p>4 Q Have you seen the claim?</p> <p>5 A I don't – I don't recall seeing the</p> <p>6 claim.</p> <p>7 Q In connection with the defense of this</p> <p>8 lawsuit and the preparation, have you made any</p> <p>9 efforts to identify the actual claim that was</p> <p>10 filed on behalf of HCMFA?</p> <p>11 MR. RUKAVINA: Let me interject –</p> <p>12 let – let me interject. And we can talk</p> <p>13 about this offline. We searched for that</p> <p>14 and could not find it. We suspect it</p> <p>15 might be in HCMLP's legal documents that</p> <p>16 we don't have access to, but we have and</p> <p>17 we continue to actively search for the</p> <p>18 claim itself. We have not been able to</p> <p>19 find it.</p> <p>20 BY MR. MORRIS:</p> <p>21 Q Does HCMFA use an insurance broker?</p> <p>22 A I don't believe so for this. I think it's</p> <p>23 directly with ICI Mutual. And it – we – there's</p> <p>24 no broker, but it goes through HCMLP's employees.</p> <p>25 Frank Waterhouse would have been the one probably</p>	<p>Page 145</p> <p>1 Dustin Norris</p> <p>2 interacting with ICI Mutual.</p> <p>3 Q HCMFA and HCMLP broke up at the end of</p> <p>4 February; is that fair?</p> <p>5 A That's correct.</p> <p>6 Q At any time since the end of February, has</p> <p>7 HCMFA made any effort to obtain any information</p> <p>8 concerning this insurance claim from ICI Mutual?</p> <p>9 A I don't know where we got the source of –</p> <p>10 of the documents, but there – there was – they</p> <p>11 were searching for the ICI documents. I don't</p> <p>12 know if it came from ICI or another source.</p> <p>13 Q Anybody –</p> <p>14 A I don't –</p> <p>15 Q Anybody from HCMFA reach out to ICI Mutual</p> <p>16 for information relating to this insurance claim</p> <p>17 at any time?</p> <p>18 A I don't – not that I'm aware of.</p> <p>19 Q Okay.</p> <p>20 A They may have, but I don't know.</p> <p>21 Q Do you know when the claim was filed?</p> <p>22 A I don't. I – I don't. I – I think it</p> <p>23 may have been late 2018, but I'm not sure.</p> <p>24 Q And at the time HCMFA filed the claim for</p> <p>25 insurance, it had already formed the opinion that</p>

<p>Page 146</p> <p>1 Dustin Norris</p> <p>2 Highland Capital Management, LP, was the</p> <p>3 responsible party; correct?</p> <p>4 A I believe so, yes.</p> <p>5 Q Did HCMFA tell the insurance company that</p> <p>6 Highland Capital Management was the responsible</p> <p>7 party?</p> <p>8 A I'm not sure. Again, this was Highland</p> <p>9 employees that filled out the materials and was</p> <p>10 working with ICI. So I don't know if your</p> <p>11 employees notified them.</p> <p>12 Q So the total estimated loss was</p> <p>13 approximately \$7.5 million; right? That's the top</p> <p>14 number on the right?</p> <p>15 A Yes.</p> <p>16 Q Okay. And roughly two-thirds of that was</p> <p>17 financed through insurance proceeds that were</p> <p>18 received in February of 2019; correct?</p> <p>19 A Correct.</p> <p>20 Q And thereafter, it's HCMFA's contention</p> <p>21 that Highland paid it another \$7.4 million for</p> <p>22 purposes of providing compensation in connection</p> <p>23 with its negligent work on the – on the TerreStar</p> <p>24 valuation error; correct?</p> <p>25 A Yes, that's correct. And that lines up,</p>	<p>Page 147</p> <p>1 Dustin Norris</p> <p>2 7.4 million, with the net – net loss that's shown</p> <p>3 there, estimated loss.</p> <p>4 Q Right. So it's fair to say, then, from --</p> <p>5 that it's HCMFA's position that it received</p> <p>6 \$7.4 million from Highland as compensation, and</p> <p>7 approximately \$5 million from the insurance</p> <p>8 carrier as compensation for total receipts of</p> <p>9 \$12.4 million in connection with the NAV star --</p> <p>10 with the TerreStar valuation error?</p> <p>11 A Correct.</p> <p>12 Q Okay. Why would H- why does HCMFA</p> <p>13 contend that its entitled to \$12.4 million from</p> <p>14 Highland and the insurance company when the total</p> <p>15 loss was only \$7.4 million?</p> <p>16 A Yeah, it's -- it's our position that the</p> <p>17 collateral -- and I'm not an attorney. But</p> <p>18 understanding our position here, that under Texas</p> <p>19 law, the collateral source rule would permit you</p> <p>20 to recover value from the insurance company and to</p> <p>21 the individual or the -- the company that created</p> <p>22 the -- or caused you harm.</p> <p>23 Q So you're -- would you agree that HCMFA</p> <p>24 has profited by about \$5 million as a result of</p> <p>25 the NAV error under that theory?</p>
<p>Page 148</p> <p>1 Dustin Norris</p> <p>2 A I -- I don't know that -- how the theory</p> <p>3 relates to profits, but we've -- we've paid -- and</p> <p>4 say, "What's the logic for this?" We paid in</p> <p>5 insurance premiums for years, significant</p> <p>6 insurance premiums. And so there's been a loss</p> <p>7 for years and years for the insurance, and then</p> <p>8 we're now hitting that insurance to say there's a</p> <p>9 gain of \$5 million, whatever number you threw out.</p> <p>10 I would disagree with that.</p> <p>11 But, yes, there was proceeds of</p> <p>12 12-and-a-half million, but we've been paying in</p> <p>13 insurance proceeds or premiums for a long time.</p> <p>14 We're going to continue, and likely, I would</p> <p>15 imagine, those premiums will go up because of the</p> <p>16 claim.</p> <p>17 So I -- I'm, again, not a lawyer. I</p> <p>18 don't understand all the reasons why it's</p> <p>19 permitted. But our position is that the</p> <p>20 collateral source rule under Texas law permits you</p> <p>21 to receive from the insurance -- your insurance</p> <p>22 provider and from the party that did you harm.</p> <p>23 And as you said, here we believe it's negligence.</p> <p>24 It may be breach of contract, but we believe it's</p> <p>25 negligence.</p>	<p>Page 149</p> <p>1 Dustin Norris</p> <p>2 Q Okay. I just want to make this really</p> <p>3 clean.</p> <p>4 The estimated net loss from the NAV</p> <p>5 error is \$7.442 million; correct?</p> <p>6 A The estimated loss from the NAV error,</p> <p>7 yes.</p> <p>8 Q Okay. And notwithstanding that HCMFA</p> <p>9 believed that Highland was the responsible party,</p> <p>10 HCMFA, nevertheless, filed a claim for insurance</p> <p>11 coverage with ICI Mutual; correct?</p> <p>12 A That's correct.</p> <p>13 Q And ICI Mutual paid almost \$5 million in</p> <p>14 connection with that claim; correct?</p> <p>15 A Correct.</p> <p>16 Q And in addition to that almost \$5 million,</p> <p>17 it's HCMFA's position that it received and was</p> <p>18 entitled to receive an additional \$7.4 million</p> <p>19 from Highland as compensation for its error;</p> <p>20 correct?</p> <p>21 A Correct.</p> <p>22 Q So that notwithstanding the fact that the</p> <p>23 estimated net loss was \$7.44 million, HCMFA</p> <p>24 received and contends that it's entitled to keep</p> <p>25 \$12.4 million; correct?</p>

<p>Page 150</p> <p>1 Dustin Norris</p> <p>2 A That's correct, subject to our defenses.</p> <p>3 Q Okay. Did – has – has HCMFA ever</p> <p>4 informed ICI Mutual that it received \$7.4 million</p> <p>5 from Highland on account of the NAV error?</p> <p>6 A Not that I'm aware of.</p> <p>7 Q Has HCMFA ever told ICI Mutual that</p> <p>8 Highland was at fault?</p> <p>9 A Again, I think I already answered that. I</p> <p>10 don't know. Communication with ICI was done by</p> <p>11 the HCMLP employees as part of the shared services</p> <p>12 agreement, and I'm not sure if they communicated</p> <p>13 that.</p> <p>14 MR. MORRIS: Okay. I move to</p> <p>15 strike.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q I just – I'm just asking for your</p> <p>18 knowledge, not speculation.</p> <p>19 Do you have any knowledge that anyone</p> <p>20 on behalf of HCMFA ever informed ICI Mutual that</p> <p>21 Highland was the cause of the NAV error?</p> <p>22 A I have no knowledge.</p> <p>23 MR. MORRIS: Let's take a short</p> <p>24 break. The time now is 3:06 – or 2:06.</p> <p>25 Let's just come back at 3:20.</p>	<p>Page 151</p> <p>1 Dustin Norris</p> <p>2 (Recess from 2:07 p.m. to 2:21 p.m. CST)</p> <p>3 BY MR. MORRIS:</p> <p>4 Q So we were talking a bit about the</p> <p>5 insurance payment that was received in February</p> <p>6 of 2019. Do you remember that?</p> <p>7 A Yes.</p> <p>8 Q And there was a claim that was filed on</p> <p>9 behalf of HCMFA that resulted in that insurance</p> <p>10 proceed payment; correct?</p> <p>11 A Correct.</p> <p>12 Q And do you recall if that insurance claim</p> <p>13 was filed in 2018 or 2019?</p> <p>14 A I don't recall, but I believe it was late</p> <p>15 2018. But I don't know.</p> <p>16 Q Yeah.</p> <p>17 A And as we testified, we don't have that</p> <p>18 claim. We've searched for it. It's probably on</p> <p>19 your server, as I – Frank Waterhouse and his team</p> <p>20 would have submitted that.</p> <p>21 Q Yeah. But you haven't made any effort to</p> <p>22 get it from the carrier; right?</p> <p>23 A No, not that I know of.</p> <p>24 Q Okay. And would you agree with me that</p> <p>25 it's probably extremely unlikely that an insurance</p>
<p>Page 152</p> <p>1 Dustin Norris</p> <p>2 carrier would have processed a claim of that</p> <p>3 magnitude in six weeks?</p> <p>4 A I know they expedited it and they</p> <p>5 specialize in – sorry. I'll step back.</p> <p>6 I have no knowledge of how quick</p> <p>7 carriers make these claims –</p> <p>8 Q All right. Do you know –</p> <p>9 A Other than hail on my house – hail damage</p> <p>10 on my roof, I don't have personal knowledge of</p> <p>11 insurance claims.</p> <p>12 MR. MORRIS: You know, I apologize,</p> <p>13 but can I ask Ms. Canty to put back up on</p> <p>14 the screen that last exhibit that we had?</p> <p>15 I don't have the exhibit number.</p> <p>16 All right. And go to the prior</p> <p>17 page. And go to the bottom of that page.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q So we've put back up on the screen, I</p> <p>20 think –</p> <p>21 MS. CANTY: 182.</p> <p>22 MR. MORRIS: 182.</p> <p>23 BY MR. MORRIS:</p> <p>24 Q All right. And do you see in the next to</p> <p>25 the last paragraph, Mr. Norris, there's a</p>	<p>Page 153</p> <p>1 Dustin Norris</p> <p>2 reference to a period from March 18, 2018, to</p> <p>3 January 19, 2019?</p> <p>4 A Yes.</p> <p>5 Q That's what they've defined as the NAV</p> <p>6 restatement period. Do you see that?</p> <p>7 A Yes, I do.</p> <p>8 Q Okay. Looking at that period, does that</p> <p>9 refresh your recollection at all as to when in</p> <p>10 2018 HCMFA first learned about the NAV error?</p> <p>11 A No, because that was – that was the</p> <p>12 period of time when the market – the off-market</p> <p>13 or on-market transactions happened, March 18th.</p> <p>14 Q Okay.</p> <p>15 A It was sometime in between that they found</p> <p>16 out that there was an error.</p> <p>17 Q Okay. And do you know if it was the first</p> <p>18 half of 2018 or the second half?</p> <p>19 A The midyear audits of some of our funds, I</p> <p>20 believe, is when it first came up.</p> <p>21 Q And –</p> <p>22 A So 6/30 audits that were due 60 days</p> <p>23 later. So second half – I believe second half of</p> <p>24 2018.</p> <p>25 Q So is it fair to say sometime in August or</p>

<p>Page 154</p> <p>1 Dustin Norris</p> <p>2 September is when HCMFA first learned about it?</p> <p>3 A About – define "it." Is that the NAV</p> <p>4 error.</p> <p>5 Q I apologize. Let me ask the question</p> <p>6 again.</p> <p>7 Is it fair to say, based on the timing</p> <p>8 of the audit, 60 days after June 30th would take</p> <p>9 us to approximately August 31st; right?</p> <p>10 A It does.</p> <p>11 Q And so is it fair to say, then, that HCMFA</p> <p>12 first learned about the NAV error sometime in</p> <p>13 August of 2018 while it was preparing the</p> <p>14 financials for the period ending June 30th?</p> <p>15 A No. I don't think there was a</p> <p>16 determination of whether there was a NAV error or</p> <p>17 not at that point. I think the reason they have</p> <p>18 going all the way to January 19 – 2019 is it</p> <p>19 wasn't determined – finalized if there is an</p> <p>20 error or not.</p> <p>21 There was a lot of discussion with the</p> <p>22 SEC and auditors over whether there was or wasn't</p> <p>23 an error, what the amount was, what the proper</p> <p>24 valuation should be. There was consultation with</p> <p>25 the SEC, and that process lasted, I believe,</p>	<p>Page 155</p> <p>1 Dustin Norris</p> <p>2 several weeks, if not months.</p> <p>3 So that is not when they found out</p> <p>4 about a NAV error, but the questions over</p> <p>5 valuation, yes.</p> <p>6 Q Okay. So then let me state the question</p> <p>7 differently then.</p> <p>8 Is it fair to say that HCMFA first</p> <p>9 learned in or about August 2018 of the valuation</p> <p>10 issues?</p> <p>11 A The "about" is key here. I don't know the</p> <p>12 specific date, but around that time or earlier –</p> <p>13 Q Okay.</p> <p>14 A – or later. On or around that time.</p> <p>15 Q And did HCMFA conclude, at the same time</p> <p>16 it learned of the valuation issues, that HCMFA was</p> <p>17 the responsible party? Or was there a gap between</p> <p>18 learning about the valuation issues and making the</p> <p>19 determination that Highland was the responsible</p> <p>20 party?</p> <p>21 A Yeah, first you said HCMFA was the</p> <p>22 responsible party, and then you said Highland.</p> <p>23 Q I apologize. Let me try and restate that.</p> <p>24 Did HCMFA conclude that Highland was</p> <p>25 the responsible party at or around the same time</p>
<p>Page 156</p> <p>1 Dustin Norris</p> <p>2 that it learned of the valuation issues, or was</p> <p>3 there a period during which it knew about the</p> <p>4 valuation issues, but not – had not yet formed</p> <p>5 the conclusion that Highland was the responsible</p> <p>6 party?</p> <p>7 A From the beginning, everybody knew who the</p> <p>8 responsible party was for the valuation. Those</p> <p>9 reporting the issues, those responding to</p> <p>10 auditors, those responding to SEC and the board</p> <p>11 were all HCMLP employees from the beginning. But</p> <p>12 I don't have a specific date.</p> <p>13 Again, as you look here, it doesn't</p> <p>14 say when the NAV error was determined, but from</p> <p>15 the beginning, it was the knowledge that HCMLP was</p> <p>16 responsible for the valuations.</p> <p>17 Q Okay. Do you know when HCMFA first</p> <p>18 determined that the estimated loss was</p> <p>19 approximately \$7.4 million?</p> <p>20 A I don't, no. I don't have specifics, but</p> <p>21 it was after there was a determination there was</p> <p>22 actually a NAV error. And it may be in some of</p> <p>23 the documents that you have. I believe it may be</p> <p>24 in, you know, a memo to the board or the SEC, but</p> <p>25 I don't know offhand.</p>	<p>Page 157</p> <p>1 Dustin Norris</p> <p>2 Q Do you know when there was a determination</p> <p>3 that there was a NAV error?</p> <p>4 A I don't know the specific time, no.</p> <p>5 Q Do you know if it was in 2019 or 2018?</p> <p>6 A I don't remember.</p> <p>7 Q Is it fair to say that it was before</p> <p>8 May of 2019?</p> <p>9 A That there was a determination there was a</p> <p>10 NAV error? Yes.</p> <p>11 Q And is it fair to say that HCMFA had</p> <p>12 concluded that the loss of that NAV error was</p> <p>13 going to be more than a million dollars prior to</p> <p>14 May 2019?</p> <p>15 A More than a million? Probably – yes.</p> <p>16 Q Okay. Is there a reason that HCMFA waited</p> <p>17 until May to have Highland pay it for the</p> <p>18 compensation?</p> <p>19 A I think that the whole process – as you</p> <p>20 see, the resolution memo is in May to the board.</p> <p>21 That was the conclusion of the overall process.</p> <p>22 So our stance would be that that was when it was</p> <p>23 the right time and everything was – the right</p> <p>24 time to be sent.</p> <p>25 MR. MORRIS: Okay. Can we put up</p>

<p>1 Dustin Norris</p> <p>2 on the screen a document that's been</p> <p>3 marked as, I think, as Exhibit 13? I</p> <p>4 don't know if you're able to get that,</p> <p>5 La Asia.</p> <p>6 MS. CANTY: Yup, I got it.</p> <p>7 MR. MORRIS: Thank you.</p> <p>8 (Exhibit 13 tendered.)</p> <p>9 BY MR. MORRIS:</p> <p>10 Q Are you aware, sir, that there came a</p> <p>11 point in time when HCMFA amended its answer?</p> <p>12 A Yes.</p> <p>13 Q And I think topic –</p> <p>14 A Topic 2 is our amended answer.</p> <p>15 Q Okay. So that's the document that's in</p> <p>16 front of you?</p> <p>17 A Yes.</p> <p>18 Q And you've seen that before; correct?</p> <p>19 A Yes.</p> <p>20 Q Okay.</p> <p>21 MR. MORRIS: Can we turn to Page 5</p> <p>22 of 9, please?</p> <p>23 And if we can scroll to the bottom.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q These are HCMFA's affirmative defenses; is</p>	<p>1 Dustin Norris</p> <p>2 that right?</p> <p>3 A On the second amended answer, yes.</p> <p>4 Q Yes.</p> <p>5 A I'm sorry. The first amended answer, yes.</p> <p>6 Q And as of today, is it your understanding</p> <p>7 that this is HCMFA's operative pleading?</p> <p>8 A No.</p> <p>9 Q Has it been amended after this time?</p> <p>10 A Yeah, we –</p> <p>11 MR. RUKAVINA: Well, he doesn't</p> <p>12 know what "operative pleading" means.</p> <p>13 THE WITNESS: Oh.</p> <p>14 MR. RUKAVINA: Yes, it is our</p> <p>15 operative pleading, Dustin.</p> <p>16 THE WITNESS: It is our operative</p> <p>17 pleading then.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q And I didn't mean to trick you. I</p> <p>20 apologize. I just meant to say that this has not</p> <p>21 been amended as of today; correct?</p> <p>22 A We filed a – wait. Let me see what it's</p> <p>23 called.</p> <p>24 Q You filed a motion for permission to amend</p> <p>25 it further –</p>
<p>1 Dustin Norris</p> <p>2 A Yes.</p> <p>3 Q – but that motion hasn't been granted;</p> <p>4 right?</p> <p>5 A To my understanding, no.</p> <p>6 Q Okay. And you understand that your – the</p> <p>7 answer that's up on the screen can't be amended</p> <p>8 unless the Court grants the motion; right?</p> <p>9 A I – if you tell me that that's the</p> <p>10 process, I'll take that for what it's worth. I'm</p> <p>11 not an attorney. I don't know the process.</p> <p>12 Q Okay. So let's just look at this</p> <p>13 document.</p> <p>14 Is it fair to say that Paragraph 38</p> <p>15 through 45 deals with –</p> <p>16 A I'm going to grab the –</p> <p>17 Q Yeah.</p> <p>18 A – thing here so I can see it on my desk,</p> <p>19 too.</p> <p>20 Q Sure.</p> <p>21 A Okay.</p> <p>22 38?</p> <p>23 Q Right.</p> <p>24 A Okay.</p> <p>25 Q Now – actually, a little background.</p>	<p>1 Dustin Norris</p> <p>2 This amended complaint was prepared</p> <p>3 after DC Sauter conducted an investigation</p> <p>4 concerning the circumstances surrounding the two</p> <p>5 notes that Highland was suing on; right?</p> <p>6 A Yes. My understanding is it is after</p> <p>7 he – so background, when he – we filed our</p> <p>8 initial response, we didn't have access to the</p> <p>9 HCMLP employees during that time period. They</p> <p>10 were not permitted to talk to us about things like</p> <p>11 this. And so he did the best he could to prepare</p> <p>12 a response. But once they were mostly all fired</p> <p>13 by HCMLP and formed their own company called</p> <p>14 Skyview, he was able to talk to them on</p> <p>15 particulars. As you note in his – his statement,</p> <p>16 he was able to talk to Frank Waterhouse, where he</p> <p>17 wasn't before, on this topic.</p> <p>18 Q Right. So by the time this document has</p> <p>19 been prepared, HCMFA had copies of the notes that</p> <p>20 Highland was suing on for six months; right?</p> <p>21 Because the lawsuit was commenced in January, and</p> <p>22 the notes were attached as exhibits to the</p> <p>23 complaint; right?</p> <p>24 A Yes. This is July 6th this is filed.</p> <p>25 Q Right. Okay. So this is filed almost six</p>

<p>Page 162</p> <p>1 Dustin Norris</p> <p>2 months after the complaint is filed; right?</p> <p>3 A More like a five-month – five months and</p> <p>4 a week, but yeah.</p> <p>5 Q All right. I won't quarrel with you.</p> <p>6 A Or five and a half – five and a half</p> <p>7 months, yeah.</p> <p>8 Q Okay.</p> <p>9 A Whether you consider that –</p> <p>10 Q Okay.</p> <p>11 A – six full months or not.</p> <p>12 Q So –</p> <p>13 A We know the dates January 22nd and</p> <p>14 July 6th.</p> <p>15 Q Okay. So for that entire time period of</p> <p>16 time, there's no dispute that HCMFA had in its</p> <p>17 possession copies of the notes that Highland was</p> <p>18 suing on; correct?</p> <p>19 A I'm looking at the original – you said</p> <p>20 they were attached, but I –</p> <p>21 Q Yeah.</p> <p>22 A If you want to show me the original notes</p> <p>23 on the original filing.</p> <p>24 Q Well, I asked you to look at the original</p> <p>25 complaint. I think – was the original complaint</p>	<p>Page 163</p> <p>1 Dustin Norris</p> <p>2 Topic Number 1? No. It's just the answer.</p> <p>3 In looking at the answer, did you look</p> <p>4 at the original complaint?</p> <p>5 A Yes.</p> <p>6 Q Do you recall seeing that the notes were</p> <p>7 attached to the original complaint?</p> <p>8 A I looked at thousands of pages in</p> <p>9 preparation, so I just – I could take your word</p> <p>10 for it if you say it's in there, or if you want to</p> <p>11 show it to me, we can look at it.</p> <p>12 MR. RUKAVINA: They are, Dustin.</p> <p>13 They are.</p> <p>14 MR. MORRIS: Yeah. I think you'll</p> <p>15 have to take my word for it. Thank you,</p> <p>16 Davor, for confirming my word.</p> <p>17 BY MR. MORRIS:</p> <p>18 Q So let me just try this again to make it</p> <p>19 clean.</p> <p>20 Based on my representation, that</p> <p>21 Mr. Rukavina has agreed with, that the notes that</p> <p>22 Highland are suing on were attached to its</p> <p>23 complaint in January, you would agree with me that</p> <p>24 HCMFA had the notes in its possession from at</p> <p>25 least the time the complaint was filed until the</p>
<p>Page 164</p> <p>1 Dustin Norris</p> <p>2 time HCMFA filed this amended answer on July 6th;</p> <p>3 correct?</p> <p>4 A Yes.</p> <p>5 Q And this amended answer was filed because</p> <p>6 HCMFA had a – had previously made a motion to the</p> <p>7 Court for leave to amend its answer; correct?</p> <p>8 MR. RUKAVINA: That's correct,</p> <p>9 Dustin.</p> <p>10 He wouldn't know about that, but</p> <p>11 that's all correct.</p> <p>12 BY MR. MORRIS:</p> <p>13 Q Okay. Well, you're familiar with the</p> <p>14 Sauter declaration; right?</p> <p>15 A I am.</p> <p>16 Q And the Sauter declaration purports to</p> <p>17 describe an investigation that Mr. Sauter</p> <p>18 undertook to determine the circumstances</p> <p>19 surrounding the notes; is that fair?</p> <p>20 A I don't know if I'd characterize it</p> <p>21 investigation, but he was tasked with – and I've</p> <p>22 got it right here. I would refer you to the</p> <p>23 agreement on – or his – to his declaration on –</p> <p>24 Q How would you – how would you</p> <p>25 characterize the work that he did? An</p>	<p>Page 165</p> <p>1 Dustin Norris</p> <p>2 investigation? An analysis? What word do</p> <p>3 you – would you use? Due diligence? How would</p> <p>4 you characterize the work that Mr. Sauter did</p> <p>5 that's set forth in his declaration?</p> <p>6 A I – I'm looking here. I want to see how</p> <p>7 he characterizes it.</p> <p>8 I think he does a very good job of</p> <p>9 explaining.</p> <p>10 My investigation would be of the</p> <p>11 following. So he calls it an investigation.</p> <p>12 Q Okay. So HCMFA would agree that after</p> <p>13 Mr. Waterhouse left the employ of Highland, that</p> <p>14 DC Sauter conducted an investigation into the</p> <p>15 circumstances surrounding the notes that Highland</p> <p>16 was suing on; correct?</p> <p>17 A Correct.</p> <p>18 Q And as part of that investigation, he</p> <p>19 spoke with Mr. Waterhouse; correct?</p> <p>20 A Yes.</p> <p>21 Q And as part of that investigation, he</p> <p>22 spoke with Mr. Dondero; correct?</p> <p>23 A I believe so, but let me – let me confirm</p> <p>24 in his statement.</p> <p>25 Because I believe in – yeah.</p>

<p>Page 166</p> <p>1 Dustin Norris</p> <p>2 Q Is that correct, that he spoke with</p> <p>3 Mr. Dondero in connection with his investigation?</p> <p>4 A I'm – I'm seeing what he rep'd to in his</p> <p>5 statement.</p> <p>6 Q And does his statement say that? I don't</p> <p>7 have it in front of me.</p> <p>8 A I don't know. That's what I'm looking at.</p> <p>9 Q And you don't know, independently of the</p> <p>10 document, whether Mr. Sauter spoke with</p> <p>11 Mr. Dondero as part of his investigation?</p> <p>12 A I know he did. I know he talked</p> <p>13 throughout from when we received the original</p> <p>14 complaint on. I just – you're asking about the</p> <p>15 time frame between filing the original filing.</p> <p>16 And I think he may have spoken with him before</p> <p>17 that, too, but I – I just want to take a...</p> <p>18 So at the time – this is on</p> <p>19 March 1st, filed the defendant's original answer.</p> <p>20 At that – at the time the debtor filed a</p> <p>21 complaint, I promptly undertook an internal review</p> <p>22 of the background facts concerning the notes. I</p> <p>23 had no knowledge of them since I had not been</p> <p>24 employed by HCMFA. And a few employees of HCMLP</p> <p>25 had no knowledge of notes. I also discussed the</p>	<p>Page 167</p> <p>1 Dustin Norris</p> <p>2 notes of James Dondero, formerly the CEO of the</p> <p>3 debtor, Mr. Dondero.</p> <p>4 So this is March 1st when that first</p> <p>5 filing was made. So he did speak with Mr. Dondero</p> <p>6 prior, and then I believe the source of the</p> <p>7 additional information was being able to speak</p> <p>8 with Frank Waterhouse and Will Mabry.</p> <p>9 Q Okay. And is it fair to say that the</p> <p>10 amended complaint is based on Mr. Sauter's</p> <p>11 investigation?</p> <p>12 A Yes, I believe so.</p> <p>13 Q Yeah.</p> <p>14 A Yes.</p> <p>15 Q That's why HCMFA amended its complaint.</p> <p>16 It's because Mr. Sauter had undertaken this</p> <p>17 investigation, and he learned what he believed</p> <p>18 were relevant facts, and those facts are described</p> <p>19 in his declaration, and they formed the basis of</p> <p>20 the affirmative defenses that we're looking at now</p> <p>21 in the amended answer, fair?</p> <p>22 A Let me pull up the amended answer just</p> <p>23 to –</p> <p>24 Q It's up on the screen, but if you have a</p> <p>25 hard copy, that's fine.</p>
<p>Page 168</p> <p>1 Dustin Norris</p> <p>2 A Yeah. I have a hard copy here, although I</p> <p>3 may have mixed my documents.</p> <p>4 Yeah, it was based on additional facts</p> <p>5 that weren't available at the time of the original</p> <p>6 response.</p> <p>7 Q Okay. And is it fair to say that</p> <p>8 Paragraphs 38 through 45 relate to the affirmative</p> <p>9 defense that Highland was responsible for the NAV</p> <p>10 error, and the \$7.4 million payment was intended</p> <p>11 to be compensation for Highland's negligent work?</p> <p>12 A Sorry. Can you ask that one more time?</p> <p>13 There was a couple parts there.</p> <p>14 Q No problem.</p> <p>15 Is it fair to say that</p> <p>16 Paragraphs 35 – withdrawn.</p> <p>17 Is it fair to say that Paragraphs 38</p> <p>18 to 45 relate to HCMFA's affirmative defense that</p> <p>19 the \$7.4 million that was transferred from</p> <p>20 Highland to HCMFA in May 2019 was intended to be</p> <p>21 compensation for Highland's negligent work in</p> <p>22 connection with the NAV error and not in the form</p> <p>23 of a loan?</p> <p>24 A You said 38 to 42?</p> <p>25 Q 38 to 45.</p>	<p>Page 169</p> <p>1 Dustin Norris</p> <p>2 A 38 to 45.</p> <p>3 Yeah, it – the NAV error items are</p> <p>4 included in there as one of our defenses.</p> <p>5 Q Right.</p> <p>6 A 43 and 44 and 45 discuss additional</p> <p>7 defenses related to the note and who may or may</p> <p>8 not have signed the note and who had authority to</p> <p>9 sign the note.</p> <p>10 Q Okay.</p> <p>11 MR. MORRIS: Can you – can we turn</p> <p>12 to Paragraph 42?</p> <p>13 THE WITNESS: Yes.</p> <p>14 BY MR. MORRIS:</p> <p>15 Q Do you see the first four – first few</p> <p>16 words in Paragraph 42 are, quote: "The defendant</p> <p>17 accepted responsibility for the NAV error"?</p> <p>18 A Yes.</p> <p>19 Q Okay. "Defendant" there refers to</p> <p>20 Highland Capital Management, LP; correct?</p> <p>21 A No. I believe –</p> <p>22 Q Oh, I apologize. I apologize.</p> <p>23 A Thank you.</p> <p>24 Q It's HCMFA; right?</p> <p>25 A HCMFA.</p>

<p style="text-align: right;">Page 170</p> <p>1 Dustin Norris</p> <p>2 Q Okay. And is – did – did HCMFA accept</p> <p>3 responsibility for the NAV error?</p> <p>4 A They did. They – they are the adviser,</p> <p>5 and there's already – in the next sentence, HCMLP</p> <p>6 then accepted that they had a contract with and</p> <p>7 accepted responsibility.</p> <p>8 Q Okay. And so when did the plaintiff</p> <p>9 accept responsibility for having caused the NAV</p> <p>10 error?</p> <p>11 A Again, going back to – this was always</p> <p>12 known and communicated that it was HCMLP</p> <p>13 employees. It was the valuation services they</p> <p>14 were performing. The legal and compliance team</p> <p>15 was all outsourced in the shared services</p> <p>16 agreement.</p> <p>17 And that was – again, there's not a</p> <p>18 singular determination; but Jim Dondero, as</p> <p>19 president, I would say effectuated that with the</p> <p>20 payment of the NAV – for the NAV error.</p> <p>21 Q So you can't tell me when the plaintiff</p> <p>22 accepted responsibility for having caused the NAV</p> <p>23 error; correct?</p> <p>24 A Not a specific date.</p> <p>25 Q Okay. And it's HCMFA's position that Jim</p>	<p style="text-align: right;">Page 171</p> <p>1 Dustin Norris</p> <p>2 Dondero, in his capacity as the president of</p> <p>3 Highland Capital Management, LP, accepted</p> <p>4 responsibility on behalf of Highland Capital</p> <p>5 Management, LP, for having caused the NAV error?</p> <p>6 A He, and in addition all of the employees</p> <p>7 involved. Right? The valuation team members,</p> <p>8 Frank Waterhouse was CFO, Dave Klos overseeing the</p> <p>9 valuation process, they were all Highland</p> <p>10 employees, and Jim Dondero as well as president</p> <p>11 recognized that based on all the communications</p> <p>12 and conversations they would have had.</p> <p>13 MR. MORRIS: Okay. I'm going to –</p> <p>14 I'm going to move to strike.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q And I'm going to ask you to listen</p> <p>17 carefully to my question.</p> <p>18 Who had the authority to accept, on</p> <p>19 behalf of plaintiff, the responsibility for having</p> <p>20 caused the NAV error?</p> <p>21 A Ultimately Jim Dondero, as president here,</p> <p>22 had that authority.</p> <p>23 Q Okay. And then it says, quote: "The</p> <p>24 plaintiff ultimately, whether through insurance or</p> <p>25 its own funds, compensated the defendant."</p>
<p style="text-align: right;">Page 172</p> <p>1 Dustin Norris</p> <p>2 Do you see that?</p> <p>3 A Yes.</p> <p>4 Q Is that statement accurate?</p> <p>5 MR. RUKAVINA: I'll object to</p> <p>6 vagueness, given the different points in</p> <p>7 time.</p> <p>8 BY MR. MORRIS:</p> <p>9 Q Does HCMFA believe that that statement is</p> <p>10 accurate today?</p> <p>11 A We know now. It's come out in discovery</p> <p>12 that – and it was represented that Mr. Dondero</p> <p>13 transferred money to Highland who transferred it</p> <p>14 to HCMFA. And I don't know – and it says "or,"</p> <p>15 "or its own funds." So it's accurate whether</p> <p>16 through insurance or its own funds.</p> <p>17 But at the time of this writing, we</p> <p>18 didn't have all the details and have firmed up</p> <p>19 those details, and I would refer you to</p> <p>20 depositions and the pleadings and our additional</p> <p>21 statement regarding cash and movement.</p> <p>22 Q Did Highland file an insurance claim, to</p> <p>23 the best of your knowledge?</p> <p>24 A Not that I know of.</p> <p>25 Q Did you ever ask anybody, in preparation</p>	<p style="text-align: right;">Page 173</p> <p>1 Dustin Norris</p> <p>2 for today's deposition, about that sentence in</p> <p>3 Paragraph 42 and whether or not Highland had ever</p> <p>4 filed an insurance claim?</p> <p>5 A I didn't ask about that sentence, but we</p> <p>6 did discuss whether Highland had filed an</p> <p>7 insurance claim. And to our knowledge, we don't</p> <p>8 know that they have. I'd, again, ask you as their</p> <p>9 attorney. That would be a question for you.</p> <p>10 Q Well, with all due respect, you have</p> <p>11 complete and unfettered access to the former</p> <p>12 president and CFO of Highland; correct?</p> <p>13 A I do, but – I'm sorry. You said</p> <p>14 president and CEO?</p> <p>15 Q The former president and CFO.</p> <p>16 A President and – I don't have unfettered</p> <p>17 access to the former CFO.</p> <p>18 MR. RUKAVINA: I'll – I'll object</p> <p>19 to that. We have been prohibited by</p> <p>20 Waterhouse's attorney from discussing the</p> <p>21 matter with him.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q You're – you're not allowed – did – did</p> <p>24 you – did HCMFA ask Mr. Waterhouse at any time</p> <p>25 whether Highland had filed an insurance claim?</p>

<p>Page 174</p> <p>1 Dustin Norris</p> <p>2 A Not – not that I know of. However, we've</p> <p>3 been not permitted to talk to him related to this,</p> <p>4 based on his attorney. So –</p> <p>5 Q Well, when did –</p> <p>6 A We never really discussed – go ahead.</p> <p>7 Q I'm sorry.</p> <p>8 A Go ahead. You were –</p> <p>9 Q I was just going to ask: When did that</p> <p>10 prohibition go into effect?</p> <p>11 MR. RUKAVINA: John, the witness</p> <p>12 wouldn't know that. It's about three</p> <p>13 months ago that the lady from Baker</p> <p>14 McKenzie, Deb – I don't know her last</p> <p>15 name – got angry at me because I tried to</p> <p>16 talk to Frank and she said, "Absolutely</p> <p>17 not. You're forbidden, and you're</p> <p>18 violating your ethical rules if you do."</p> <p>19 MR. MORRIS: So sometime in</p> <p>20 September?</p> <p>21 MR. RUKAVINA: I would say August</p> <p>22 or September.</p> <p>23 MR. MORRIS: Okay.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q But sometime – but you had – HCMFA had</p>	<p>Page 175</p> <p>1 Dustin Norris</p> <p>2 complete, unfettered access to Mr. Waterhouse from</p> <p>3 the time he left Highland in early March 2021</p> <p>4 until at least the end of July 2021; right?</p> <p>5 A Yeah. And I would add a point to</p> <p>6 Mr. Sauter's declaration and our pleadings and the</p> <p>7 depositions for the various details of what we've</p> <p>8 discovered since. However, the unfettered access</p> <p>9 was also inhibited – or – or Mr. Sauter</p> <p>10 represented this. There was a lot going on in</p> <p>11 March, April, May of 2021.</p> <p>12 Q Yeah.</p> <p>13 A And we were trying to lift out an entire</p> <p>14 business and keep everything afloat, and – as</p> <p>15 you're very aware. And so there was a lot going</p> <p>16 on.</p> <p>17 Q Right. Right.</p> <p>18 Do you see – can we go to</p> <p>19 Paragraph 43, please?</p> <p>20 A Yes.</p> <p>21 MR. MORRIS: If we could just</p> <p>22 scroll down to Paragraph 43, please.</p> <p>23 Thank you.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q Now, again, this amended complaint is</p>
<p>Page 176</p> <p>1 Dustin Norris</p> <p>2 filed is July 2006; correct?</p> <p>3 A July 6th, not July 2006.</p> <p>4 Q I apologize. Let me ask the question</p> <p>5 again.</p> <p>6 This amended answer was filed on</p> <p>7 July 6th, 2021; correct?</p> <p>8 A Correct.</p> <p>9 Q And it was filed after Mr. Sauter</p> <p>10 conducted his investigation to determine the</p> <p>11 circumstances surrounding the note; correct?</p> <p>12 A Uh-huh, correct.</p> <p>13 Q And it was filed after HCMFA had had in</p> <p>14 its possession since January copies of the notes</p> <p>15 that Highland was suing on; correct?</p> <p>16 A Correct.</p> <p>17 Q And it was filed at a time before any</p> <p>18 limitation or prohibition was placed on HCMFA's</p> <p>19 ability to communicate with Mr. Waterhouse since</p> <p>20 the time he had left Highland; correct?</p> <p>21 A Sorry. You want to repeat the first part</p> <p>22 of that?</p> <p>23 Q Sure.</p> <p>24 It was filed at a time after</p> <p>25 Mr. Waterhouse left the employ of Highland but</p>	<p>Page 177</p> <p>1 Dustin Norris</p> <p>2 before there was any limitation or restriction</p> <p>3 imposed on HCMFA's ability to communicate with</p> <p>4 Mr. Waterhouse?</p> <p>5 A Yes. Once he left in March of 2021 is</p> <p>6 when that happened. And, again, in March, we</p> <p>7 were, on both sides, the creation of Skyview, as</p> <p>8 well as our employees, trying as – doing</p> <p>9 everything we could do to transition the</p> <p>10 businesses and services. And so that was an</p> <p>11 important time.</p> <p>12 MR. MORRIS: Okay. Move to strike.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q I just want to confirm that HCMFA had</p> <p>15 unfettered access to Mr. Waterhouse between the</p> <p>16 time he left Highland and the time this amended</p> <p>17 answer was filed in July.</p> <p>18 A We had access to him to ask him what we</p> <p>19 needed. Unfettered in the sense of, "Hey, we can</p> <p>20 access you whenever we need," no, because there</p> <p>21 was a lot involved in launching and – launching</p> <p>22 of Skyview and creating all the services needed</p> <p>23 for our funds since we – HCMFP is sharing</p> <p>24 services provided –</p> <p>25 Q Does Mr. Sauter have a role with HCMFA?</p>

<p>Page 178</p> <p>1 Dustin Norris</p> <p>2 A I don't believe so.</p> <p>3 Q Do you know who authorized him to conduct</p> <p>4 this investigation?</p> <p>5 A Yeah. It would have been management,</p> <p>6 Mr. Dondero, and probably our outside counsel. At</p> <p>7 the time, we had been utilizing Highland's</p> <p>8 services as legal services, all the way up until</p> <p>9 the end of February.</p> <p>10 There were legal and compliance</p> <p>11 services that were part of the shared services</p> <p>12 agreement. There was an entire legal team, entire</p> <p>13 team of litigators who were unable to work on</p> <p>14 this.</p> <p>15 Mr. Sauter was a real estate attorney</p> <p>16 for us, and he picked up the slack and was</p> <p>17 assigned by Mr. Dondero to help in these causes</p> <p>18 working with outside counsel, because HCMLP was</p> <p>19 not providing or no longer able to provide those</p> <p>20 legal services based on their – their view, even</p> <p>21 though they were contracted to do those.</p> <p>22 Q That contract ended at the end of</p> <p>23 February; isn't that right?</p> <p>24 A That's correct.</p> <p>25 Q And with the exception of a couple of</p>	<p>Page 179</p> <p>1 Dustin Norris</p> <p>2 people, Highland's legal team migrated to Skyview</p> <p>3 in early 2021; is that fair?</p> <p>4 A Yes.</p> <p>5 Q Okay. And among the people who migrated</p> <p>6 were Stephanie Vitiello; correct?</p> <p>7 A Yes.</p> <p>8 Q And Isaac Leventon; correct?</p> <p>9 A Correct.</p> <p>10 Q And he's the chief litigation guy at</p> <p>11 Highland prior to the bankruptcy; right?</p> <p>12 A I – I don't know if that was Isaac or if</p> <p>13 it was Scott Ellington. I don't know.</p> <p>14 Q And Scott – Scott Ellington also</p> <p>15 migrated; right?</p> <p>16 A Correct.</p> <p>17 Q So you had access to those folks for the</p> <p>18 first six months of 2021; right?</p> <p>19 A No. I would – our position is that those</p> <p>20 individuals were unable to work on – even though</p> <p>21 they had left, they were unable to work on</p> <p>22 something of this nature.</p> <p>23 I – I believe there was also a</p> <p>24 preliminary injunction still in place where Jim or</p> <p>25 his employees could not talk to Scott or Isaac. I</p>
<p>Page 180</p> <p>1 Dustin Norris</p> <p>2 don't remember all the specific details, but the</p> <p>3 legal team at Highland – or at Skyview was not</p> <p>4 working on this.</p> <p>5 Q Okay.</p> <p>6 A It was probably professional – I don't</p> <p>7 know the standards, but they were unable to work</p> <p>8 on – on this.</p> <p>9 Q All right. But you would agree that at</p> <p>10 the time HCMFA asked the court for permission to</p> <p>11 amend its answer, it did so based on Mr. Sauter's</p> <p>12 investigation; correct?</p> <p>13 A Yes, and I would caveat that subject to</p> <p>14 our – our pleadings.</p> <p>15 Q Right. And I think I moved to strike your</p> <p>16 earlier answer, so let me try and ask the question</p> <p>17 again.</p> <p>18 Did Mr. Dondero authorize Mr. Sauter</p> <p>19 to conduct the investigation?</p> <p>20 A I don't have specific knowledge of that.</p> <p>21 Q All right. I think you used the phrase</p> <p>22 "management." Did management authorize Mr. Sauter</p> <p>23 to conduct this investigation on behalf of HCMFA?</p> <p>24 A I don't know specifically who – who would</p> <p>25 have asked him to do the – Jim and – Jim Dondero</p>	<p>Page 181</p> <p>1 Dustin Norris</p> <p>2 asked him to help with the – the legal items, and</p> <p>3 stepped in and help in the absence of HCMLP's</p> <p>4 help.</p> <p>5 Q Okay. And based on that investigation</p> <p>6 looking at Paragraph 43, HCMFA took the position,</p> <p>7 quote: "Waterhouse signed the two promissory</p> <p>8 notes the subject of the complaint," close quote;</p> <p>9 correct?</p> <p>10 A That's right. It's our position that</p> <p>11 at – and I'd refer you to our amended pleading</p> <p>12 with additional information, but it's – it's our</p> <p>13 position that Mr. Waterhouse saw the notes, was</p> <p>14 confronted, discussed with DC, and said, "Look,</p> <p>15 that's my signature. I signed them."</p> <p>16 Q Okay. So that's – and it was on the</p> <p>17 basis of Mr. Waterhouse's conversation with</p> <p>18 Mr. Sauter that HCMFA wrote that sentence; is that</p> <p>19 fair?</p> <p>20 A I believe so. And I would refer you to</p> <p>21 Mr. Sauter's declaration as well, which goes into</p> <p>22 details on that.</p> <p>23 Q And Mr. Sauter specifically said that</p> <p>24 Mr. Waterhouse signed the notes; correct?</p> <p>25 A We can look at Mr. Sauter's declaration.</p>

<p>Page 182</p> <p>1 Dustin Norris</p> <p>2 I – I believe he said he was – Mr. Waterhouse</p> <p>3 told him he signed, but –</p> <p>4 Q Right. And, in fact, HCMFA's position</p> <p>5 throughout this entire case was that</p> <p>6 Mr. Waterhouse signed the notes, but he did so by</p> <p>7 mistake and without authority; correct?</p> <p>8 A That's right. And if you look at the</p> <p>9 depositions, he testified of that, that he didn't</p> <p>10 remember signing them, and he didn't have a</p> <p>11 recollection, and Mr. Dondero never told him to</p> <p>12 sign it, and he never asked him whether – or</p> <p>13 he – Mr. Dondero told him never – told him</p> <p>14 shouldn't be – didn't – Mr. Dondero didn't tell</p> <p>15 him it was a note, and he never asked if it should</p> <p>16 be a note.</p> <p>17 With this – this amended pleading,</p> <p>18 the thought was he mistakenly thought it was a</p> <p>19 note, because that was the practice for other</p> <p>20 notes or other – other transfers of this</p> <p>21 nature – not of this nature, but other transfers</p> <p>22 between companies, and so he had papered it up as</p> <p>23 a note.</p> <p>24 But if you look at the depositions,</p> <p>25 you'll see that additional details came out that</p>	<p>Page 183</p> <p>1 Dustin Norris</p> <p>2 he told his controller, Mr. Klos, to transfer the</p> <p>3 funds, and Mr. Klos then turned around and asked</p> <p>4 Kristin to paper it up as a note, and to transfer</p> <p>5 the cash. And Ms. Hendrix – Kristin Hendrix then</p> <p>6 added Mr. Waterhouse's JPEG signature to the Word</p> <p>7 document, which then was filed away.</p> <p>8 So we – we, through the process of</p> <p>9 depositions and discovery, were able to find more</p> <p>10 information that Frank Waterhouse did not</p> <p>11 remember. He didn't remember signing but said his</p> <p>12 signature is on there, so he must have signed it.</p> <p>13 MR. MORRIS: All right. I move to</p> <p>14 strike. My question is really, really</p> <p>15 simple.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q Up until the time that you filed the</p> <p>18 motion last night, HCMFA's publicly stated</p> <p>19 position has always been that Frank Waterhouse</p> <p>20 signed the notes, and that he did so by mistake</p> <p>21 and without authority; correct?</p> <p>22 A Correct. It says it here:</p> <p>23 "Mr. Waterhouse made a mistake in preparing and</p> <p>24 signing the notes for the defendant."</p> <p>25 Q Okay. Good enough.</p>
<p>Page 184</p> <p>1 Dustin Norris</p> <p>2 A And then it says: "Upon information" –</p> <p>3 Q That's –</p> <p>4 A – "and belief, Waterhouse was not aware</p> <p>5 that the payment from the plaintiff to defendant</p> <p>6 were to compensate the defendant for the NAV</p> <p>7 error."</p> <p>8 Q I'm sorry. Where are you reading from?</p> <p>9 Oh, that's 44?</p> <p>10 A That's in number 44.</p> <p>11 Q Okay.</p> <p>12 A Yeah. "Waterhouse made a mistake in</p> <p>13 preparing and signing the notes for the</p> <p>14 defendant."</p> <p>15 Q Right. Okay.</p> <p>16 A But, again, I'll refer you to the</p> <p>17 depositions and the evidence –</p> <p>18 MR. MORRIS: Move to strike. It's</p> <p>19 not responsive to my question.</p> <p>20 BY MR. MORRIS:</p> <p>21 Q Do you see in Paragraph 47 there's a</p> <p>22 reference to "lack of consideration"?</p> <p>23 A Yes.</p> <p>24 Q Okay. What does that mean?</p> <p>25 A My understanding is that there was no</p>	<p>Page 185</p> <p>1 Dustin Norris</p> <p>2 consideration. We – there were notes, but there</p> <p>3 was no payment for those notes. The payment was</p> <p>4 for compensation related to the NAV error, so</p> <p>5 there was no payment – or no compensation for</p> <p>6 notes that had been drafted.</p> <p>7 Q Okay. And the next defense there in</p> <p>8 Paragraph 47 is "mutual mistake."</p> <p>9 Do you see that?</p> <p>10 A Correct.</p> <p>11 Q Do you have any facts that support that,</p> <p>12 that the mistake was mutual?</p> <p>13 A Yeah. I – I would look to the</p> <p>14 depositions. And if you go to the testimony of</p> <p>15 Frank and Jim Dondero and David Klos and Kristin,</p> <p>16 it was a clear path and a clear record of mutual</p> <p>17 mistake.</p> <p>18 Jim told Frank to transfer the money</p> <p>19 for the NAV error. Frank then goes, tells</p> <p>20 Mr. Klos, the controller, to go and transfer the</p> <p>21 money, who tells Kristin to transfer the money –</p> <p>22 or to make the transfer and to paper it up.</p> <p>23 Kristin then papers it up, following the process</p> <p>24 that she's always followed or she said she's</p> <p>25 followed for many other notes.</p>

<p>Page 186</p> <p>1 Dustin Norris</p> <p>2 She lacked the authority to do so.</p> <p>3 Mr. Klos lacked the authority. Mr. Waterhouse was</p> <p>4 never told to make a note, and so the note itself</p> <p>5 is drafted by an accountant without authority to</p> <p>6 do so with a maker and a counterparty that is on</p> <p>7 both sides of this, representing supposedly both</p> <p>8 sides.</p> <p>9 And our position is that the maker of</p> <p>10 this – even if you look at the document, Frank</p> <p>11 Waterhouse signs as maker, not as his position.</p> <p>12 He's signing as the maker.</p> <p>13 And so there's various aspects of this</p> <p>14 that had errors on both sides, the – the position</p> <p>15 of HCMFA where they thought they had authority and</p> <p>16 the position of HCMLP.</p> <p>17 Q Anything else, sir?</p> <p>18 A I – I would refer you to the – again,</p> <p>19 the depositions and our pleadings. But there's –</p> <p>20 there's a host of support there.</p> <p>21 Q Other than the deposition transcripts and</p> <p>22 the – and HCMFA's pleadings, are you aware of any</p> <p>23 document anywhere in the world that corroborates</p> <p>24 the defense of mutual mistake?</p> <p>25 A Other than the documents, the pleadings,</p>	<p>Page 187</p> <p>1 Dustin Norris</p> <p>2 and any schedules and other forms that are filed</p> <p>3 with the court, there's – there's plenty there.</p> <p>4 Q Okay. What schedules are you referring</p> <p>5 to?</p> <p>6 A I would say all of your supporting</p> <p>7 schedules, all of your documentation, the notes</p> <p>8 themselves, the – the Word documents that we</p> <p>9 received as well in discovery that have the</p> <p>10 metadata showing that Kristin Hendrix applied</p> <p>11 Frank Waterhouse's JPEG signature.</p> <p>12 Q Okay.</p> <p>13 A All of those items as well as, again,</p> <p>14 depositions all – of all those individuals.</p> <p>15 Q So – so I just want to make sure that I</p> <p>16 have this clear.</p> <p>17 So you've got the JPEG documents.</p> <p>18 You've got the deposition transcripts. You know</p> <p>19 what? Let me restate the question.</p> <p>20 You've identified the JPEG documents.</p> <p>21 Other than the JPEG documents, are you aware of</p> <p>22 any document in the world that was created before</p> <p>23 the answer date that supports or corroborates the</p> <p>24 defense of mutual mistake?</p> <p>25 A I'm – again, I – I'd point to the –</p>
<p>Page 188</p> <p>1 Dustin Norris</p> <p>2 let – let me take a look here again.</p> <p>3 Q What is it you're looking at?</p> <p>4 A This is the amended complaint.</p> <p>5 Q Okay.</p> <p>6 A Which paragraph was that again?</p> <p>7 Q It's 47.</p> <p>8 A 47.</p> <p>9 Q Yeah. There's – it's a – there's –</p> <p>10 A Mutual mistake.</p> <p>11 Q – one of the defenses there. It's up on</p> <p>12 the screen.</p> <p>13 A Yeah.</p> <p>14 Q There's "mutual mistake," and I just want</p> <p>15 you to identify for me every document that HCMFA</p> <p>16 is aware of that was created before the answer</p> <p>17 date of March 1st, 2001 [sic], other than the JPEG</p> <p>18 documents –</p> <p>19 A I would – I would refer you to –</p> <p>20 Q – that support or corroborate – that</p> <p>21 support or corroborate the defense of mutual</p> <p>22 mistake?</p> <p>23 A Yeah. And I'd also point you to DC</p> <p>24 Sauter's declaration.</p> <p>25 Q Okay. That wasn't created before the</p>	<p>Page 189</p> <p>1 Dustin Norris</p> <p>2 answer date; correct?</p> <p>3 A Well, you're saying – you – it was</p> <p>4 before the answer date.</p> <p>5 Q Pardon me?</p> <p>6 A The answer date being when we did the</p> <p>7 amended answer?</p> <p>8 Q No. Let me ask the question again.</p> <p>9 A Yes, please. Sorry.</p> <p>10 Q Can you identify any document in the</p> <p>11 world, other than the JPEG documents, that support</p> <p>12 or corroborate the defense of mutual mistake that</p> <p>13 was created before March 1st, 2021?</p> <p>14 A I got you.</p> <p>15 The JPEG documents is the Word</p> <p>16 documents with the metadata.</p> <p>17 Q Correct.</p> <p>18 A There were emails that went between the</p> <p>19 accounting team on how to paper it up. That is in</p> <p>20 your – your documentation as well, and I would</p> <p>21 say any other document that's in the court</p> <p>22 filings.</p> <p>23 Q Can you identify them? That's kind of –</p> <p>24 that's not really helpful to me.</p> <p>25 A Yeah. I – there's the – there's an</p>

<p>Page 190</p> <p>1 Dustin Norris</p> <p>2 email – and this was used in depositions.</p> <p>3 There's an email that went – was David Klos</p> <p>4 instructing the group – or instructing Kristin to</p> <p>5 send the cash and to record a note.</p> <p>6 Q And you believe that – and it's HCMFA's</p> <p>7 contention that that document supports their</p> <p>8 position of mutual mistake. Do I have that right?</p> <p>9 A Again, I'm not an attorney, so tying the</p> <p>10 definition as little M, little M, I'm going to</p> <p>11 have to say I don't know.</p> <p>12 Q Okay. Other than the emails, the two</p> <p>13 emails that you referenced and the JPEG documents,</p> <p>14 can you identify any other document created before</p> <p>15 May 1st – March 1st, 2021, that supports or</p> <p>16 corroborates the defense of mutual mistake?</p> <p>17 A There may be a document. I – I don't</p> <p>18 know.</p> <p>19 Q Okay.</p> <p>20 A And, again, as you've seen, there's a lot</p> <p>21 of stuff that's come out in discovery, and it's</p> <p>22 important that testimony of – of those witnesses</p> <p>23 is taken into account.</p> <p>24 MR. MORRIS: Okay. Move to strike</p> <p>25 the last portion of that answer.</p>	<p>Page 191</p> <p>1 Dustin Norris</p> <p>2 Let's take a short break. I may be</p> <p>3 done. It's 4:09. Can we just come back</p> <p>4 in six minutes?</p> <p>5 THE WITNESS: Yes. Thank you.</p> <p>6 MR. RUKAVINA: Sure.</p> <p>7 MR. MORRIS: Thank you.</p> <p>8 (Recess from 3:09 p.m. to 3:19 p.m. CST)</p> <p>9 BY MR. MORRIS:</p> <p>10 Q Just a couple more questions, Mr. Norris.</p> <p>11 If you can take a look again at</p> <p>12 Paragraph 47 of the amended answer.</p> <p>13 A Yes.</p> <p>14 Q Do you see there's also a reference to,</p> <p>15 quote, "the lack of authority from the defendant</p> <p>16 to Waterhouse," close quote?</p> <p>17 A Yes.</p> <p>18 Q HCMFA does not dispute that Mr. Waterhouse</p> <p>19 was an officer of HCMFA in May of 2019, does it?</p> <p>20 A No, we don't dispute that.</p> <p>21 Q And HCMFA doesn't dispute that</p> <p>22 Mr. Waterhouse, in fact, served as the treasurer</p> <p>23 of HCMFA in May 2019; correct?</p> <p>24 A We don't, no.</p> <p>25 Q Okay. Is the sole basis for the assertion</p>
<p>Page 192</p> <p>1 Dustin Norris</p> <p>2 that Mr. Waterhouse lacked authority was that</p> <p>3 Mr. Dondero did not specifically approve it?</p> <p>4 A By nature, just the size of this note and</p> <p>5 the nature of it would have required Mr. Dondero's</p> <p>6 authority. And both Mr. Waterhouse and</p> <p>7 Mr. Dondero testified to that in their deposition.</p> <p>8 So I'd refer you to that. They both testified he</p> <p>9 did not have the authority.</p> <p>10 MR. MORRIS: I'm not sure that he</p> <p>11 did, so I'm going to move to strike. The</p> <p>12 testimony will be what the testimony will</p> <p>13 be, not your characterization of it.</p> <p>14 BY MR. MORRIS:</p> <p>15 Q But what about the size of the notes</p> <p>16 causes HCMFA to contend that Mr. Waterhouse didn't</p> <p>17 have authority?</p> <p>18 A A seven and a half million dollar note is</p> <p>19 large enough to rise that Jim Dondero would have,</p> <p>20 in any instance, authorized or needed to authorize</p> <p>21 this, and he did not.</p> <p>22 Q And is that because a \$7.4 million note is</p> <p>23 a substantial obligation for HCMFA?</p> <p>24 A You know, substantial – define</p> <p>25 "substantial." It's sizeable. Right? It's seven</p>	<p>Page 193</p> <p>1 Dustin Norris</p> <p>2 and a half million dollars. Overall from the</p> <p>3 operating business, it was meaningful. But seven</p> <p>4 and a half million dollars in any entity would</p> <p>5 have required Jim Dondero's approval.</p> <p>6 Q And so can you explain to me why, if it</p> <p>7 would have required his approval, nobody at HCMFA</p> <p>8 noticed that it was carried on HCMFA's books and</p> <p>9 records as a liability since May of 2019?</p> <p>10 A Yeah. I think it's a simple mistake.</p> <p>11 There were other notes of a similar nature in</p> <p>12 size. And as Mr. Dondero testified, he wasn't</p> <p>13 reviewing these regularly, the balance sheet.</p> <p>14 Frank Waterhouse was. The accounting team was.</p> <p>15 And so the HCMFA side, there was other notes of</p> <p>16 similar size and nature. It didn't occur to them</p> <p>17 that there was new notes. The accounting team, as</p> <p>18 we've – which is our position, created the notes,</p> <p>19 added the signature of Mr. Waterhouse, and then</p> <p>20 they continued to record those as liabilities on</p> <p>21 the balance sheet. And –</p> <p>22 Q Is –</p> <p>23 A – that was – you had – and, again, I'd</p> <p>24 refer you to our pleadings and our amended</p> <p>25 pleadings and the recent pleading yesterday that</p>

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1 Dustin Norris

2 we discovered in the discovery process. But

3 Kristin Hendrix and Dave Klos and Frank Waterhouse

4 made it very clear what the process – and I would

5 say why – in answer to your question, it was

6 probably a little sloppy. It may have cut

7 corners. They should have received Mr. Dondero's

8 authorization, and they didn't. And so

9 that's – that's our position.

10 Q Does –

11 A And I would say these are all

12 professionals. These are good people. I don't

13 think they were dishonest. I think they made a

14 mistake. Professionals make mistakes, but this

15 was a costly mistake.

16 Q Did – does – does HCMFA contest that

17 Frank Waterhouse knew, on May 2nd and May 3rd,

18 2019, that the corporate accounting group was

19 going to paper these transactions as loans?

20 A Again, I would refer you to the actual

21 depositions and pleadings – and our pleadings.

22 But our position is – sorry. One more time, do

23 you want to ask the question?

24 Q Yeah. I think you need to – I want to

25 try to finish up, and I really appreciate your

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1 Dustin Norris

2 again, refer you to all the pleadings, our

3 pleadings and depositions that – of these

4 individuals. There's – there's a lot of support

5 there.

6 Q Right.

7 Have you seen the emails from May 2nd

8 and May 3rd?

9 A I can't remember if they were included in

10 your exhibits, but I know they were discussed in

11 detail in the depositions from Dave Klos and

12 Kristin and Frank.

13 Q Right. Okay.

14 MR. MORRIS: I have no further

15 questions. This is not particularly

16 helpful. Thanks.

17 MR. RUKAVINA: Okay. I'll reserve

18 questions. Thank you.

19 MR. MORRIS: Okay. Thanks a lot.

20 MR. RUKAVINA: Thank you.

21 (Off the record at 3:25 p.m. CST)

22

23

24

25

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1 Dustin Norris

2 patience.

3 MR. RUKAVINA: And I'll just say,

4 John, that was a bit of a confusing

5 question.

6 MR. MORRIS: Okay. And that's

7 fair. Let me try again.

8 BY MR. MORRIS:

9 Q Does HCMFA contest that Frank Waterhouse

10 knew, on May 2nd and May 3rd, 2019, that the

11 corporate accounting group was going to paper the

12 transfers from Highland as loans?

13 A Did we contest that he knew that?

14 Q Correct.

15 A I think his testimony speaks – I'll refer

16 you to his testimony. I think he testified that

17 he didn't know, right? He didn't know that

18 they – yes, he was copied on an email, but he

19 didn't have any recollection that they were

20 papered up as a loan.

21 Q Okay. And on the basis of that testimony,

22 does HCMFA now contend that Mr. Waterhouse didn't

23 know, in May of 2019, that these transfers were

24 papered as loans?

25 A I would say that's part of it. I would,

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1 IN THE UNITED STATES BANKRUPTCY COURT

2 FOR THE NORTHERN DISTRICT OF TEXAS

3 DALLAS DIVISION

4 In re:)Chapter 11

5)

6 HIGHLAND CAPITAL MANAGEMENT, LP,)

7)Case No.

8 Debtor.)19-34054-SGJ-11

9)

10 HIGHLAND CAPITAL MANAGEMENT, LP,)

11)

12 Plaintiff,)

13)

14 vs.)Advisory Proceeding No.

15)21-03004

16 NEXPOINT ADVISORS, LP; JAMES)

17 DONDERO; NANCY DONDERO; and THE)

18 DUGABOY INVESTMENT TRUST,)

19)

20 Defendants.)

21)

22

23 REPORTER'S CERTIFICATION

24 REMOTE DEPOSITION OF

25 DUSTIN NORRIS

December 1, 2021

I, Rebecca A. Graziano, Certified Shorthand

Reporter in and for the State of Texas, hereby

certify to the following:

That the witness, DUSTIN NORRIS, was duly

sworn and that the transcript of the oral

deposition is a true record of the testimony given

by the witness;

I further certify that pursuant to FRCP Rule

30(f)(1) that the signature of the deponent:

_____ was requested by the deponent or a

party before the completion of the deposition and

Page 198

1 returned within 30 days from date of receipt of
 2 the transcript. If returned, the attached Changes
 3 and Signature Page contains any changes and the
 4 reasons therefor.

5 _____ was not requested by the deponent or a
 6 party before the completion of the deposition.

7 I further certify that I am neither attorney
 8 nor counsel for, related to, nor employed by any
 9 of the parties to the action in which this
 10 testimony was taken.

11 Further, I am not a relative or employee of
 12 any attorney of record in this cause, nor do I
 13 have a financial interest in the action.

14 Subscribed and sworn to on this 1st day of
 15 December, 2021.

16

17

18

19

20

Rebecca A. Graziano, CSR, RMR, CRR

21 Texas CSR 9306

Expiration: 07/31/22

22 California CSR 14407

Expiration: 09/30/22

23 Illinois CSR 084.004659

Expiration: 05/31/23

24

25

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1 ERRATA SHEET

2 Case Name:

3 Deposition Date:

4 Deponent:

5 Pg. No. Now Reads Should Read Reason

6 _____

7 _____

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19 _____

20 _____

21 _____

22 Signature of Deponent

SUBSCRIBED AND SWORN BEFORE ME

23 THIS ____ DAY OF _____, 2021.

24 _____

25 (Notary Public) MY COMMISSION EXPIRES: _____

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EXHIBIT 194

Kristin Hendrix - October 27, 2021

1	<p>1 IN THE UNITED STATES BANKRUPTCY COURT</p> <p>2 FOR THE NORTHERN DISTRICT OF TEXAS</p> <p>3 DALLAS DIVISION</p> <p>4 --oOo--</p> <p>5</p> <p>6 HIGHLAND CAPITAL MANAGEMENT,)</p> <p>7 L.P.,)</p> <p>8)</p> <p>9 Plaintiff,)</p> <p>10)</p> <p>11 vs.) No. 21-03004-sgj</p> <p>12)</p> <p>13 HIGHLAND CAPITAL MANAGEMENT FUND)</p> <p>14 ADVISORS, L.P.,)</p> <p>15)</p> <p>16 Defendants.)</p> <hr/> <p>17 DEPOSITION OF</p> <p>18 KRISTIN HENDRIX</p> <p>19 October 27, 2021</p> <hr/> <p>20 DEPOSITION OF KRISTIN HENDRIX, produced as a</p> <p>21 witness, duly sworn by me via videoconference at the</p> <p>22 instance of the DEFENDANTS, was taken in the</p> <p>23 above-styled and numbered cause on October 27, 2021,</p> <p>24 from 10:11 A.M. to 1:19 P.M., before BRANDON D. COMBS,</p> <p>25 CSR, RPR, in and for the State of Texas, reported by</p> <p>computerized machine shorthand, at 500 North Akard</p> <p>Street, 38th Floor, Dallas, Texas.</p>	3
2	<p>1 APPEARANCES</p> <p>2</p> <p>3 MUNSCH, HARDT, KOPF & HARR, PC, 500 North</p> <p>4 Akard Street, Suite 3800, Dallas, TX 75201, represented</p> <p>5 by DAVOR RUKAVINA, Attorney at Law, appeared as counsel</p> <p>6 on behalf of the Defendants.</p> <p>7 Email: drukavina@munsch.com</p> <p>8</p> <p>9</p> <p>10 PACHULSKI, STANG, ZIEHL & JONES, 780 Third</p> <p>11 Avenue, 34th Floor, New York, NY 10017-2024, represented</p> <p>12 by JOHN A. MORRIS, Attorney at Law, appeared as counsel</p> <p>13 on behalf of the Plaintiff.</p> <p>14 Email: jmorris@pszjlaw.com</p> <p>15</p> <p>16</p> <p>17 STINSON, LLP, 3102 Oak Lawn Avenue, Suite 777,</p> <p>18 Dallas, TX 75219, represented by MICHAEL AIGEN, Attorney</p> <p>19 at Law, appeared via videoconference as counsel on</p> <p>20 behalf of the Defendants Jim Dondero, HCMS and HCRE</p> <p>21 Partners.</p> <p>22 Email: michael.aigen@stinson.com</p> <p>23</p> <p>24</p> <p>25</p>	4
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<p style="text-align: right;">5</p> <p>1 Exhibit 17 Email from James Seery to 88</p> <p>2 James Dondero, Jan 7, 2021, demand</p> <p>3 on promissory note</p> <p>4</p> <p>5 Exhibit 18 Email from Kristin Hendrix, Jan 12, 90</p> <p>6 2021, NexPoint Note to HCMLP</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">7</p> <p>1 understood my question; okay?</p> <p>2 A. Yeah.</p> <p>3 MR. MORRIS: Objection.</p> <p>4 Q. (BY MR. RUKAVINA) Sometimes Counsel will</p> <p>5 make objections. Unless he instructs you not to</p> <p>6 answer, you're still required to answer my questions.</p> <p>7 A. Okay.</p> <p>8 Q. Now, in preparation for this deposition, did</p> <p>9 you read the deposition transcript or any part of it of</p> <p>10 Frank Waterhouse?</p> <p>11 A. I did not.</p> <p>12 Q. Did anyone provide you a synopsis or summary</p> <p>13 of it?</p> <p>14 A. Maybe a few bits and pieces, but...</p> <p>15 MR. RUKAVINA: Off the record for a second.</p> <p>16 (Off the record.)</p> <p>17 Q. (BY MR. RUKAVINA) What do you mean bits and</p> <p>18 pieces?</p> <p>19 A. I don't recall anything specific that was</p> <p>20 said, other than it was very long.</p> <p>21 Q. Did you talk to Frank Waterhouse about it?</p> <p>22 A. Did not.</p> <p>23 Q. Other than Highland's legal counsel, did you</p> <p>24 talk to anyone else about -- or -- strike that.</p> <p>25 Other than Highland's legal counsel, did you</p>
<p style="text-align: right;">6</p> <p>1 KRISTIN HENDRIX,</p> <p>2 having been first duly sworn, testified as follows:</p> <p>3 EXAMINATION</p> <p>4 Q. (BY MR. RUKAVINA) Good morning. If you'll</p> <p>5 state your name.</p> <p>6 A. Kristin Hendrix.</p> <p>7 Q. We're doing this both ways. You're on the</p> <p>8 Zoom remotely and they can see you, but I would ask</p> <p>9 that you and I maintain eye contact. Of course, if</p> <p>10 someone is asking you on the Zoom, then maintain</p> <p>11 contact with them, if that's okay with you.</p> <p>12 A. Sure.</p> <p>13 Q. Have you been deposed before?</p> <p>14 A. No.</p> <p>15 Q. So I'm sure your counsel explained to you,</p> <p>16 but very quickly, you understand that you're testifying</p> <p>17 under oath and penalty of perjury as though you were in</p> <p>18 a court of law?</p> <p>19 A. Yes.</p> <p>20 Q. And you understand my job is to ask clear</p> <p>21 questions that you understand?</p> <p>22 A. Yes.</p> <p>23 Q. And if for whatever reason you don't</p> <p>24 understand my questions, please let me know or ask me</p> <p>25 to rephrase; otherwise, I'm going to assume that you</p>	<p style="text-align: right;">8</p> <p>1 talk to anyone about Frank Waterhouse's deposition from</p> <p>2 last week?</p> <p>3 A. I did not.</p> <p>4 Q. Did you review -- strike that.</p> <p>5 Did you see any of the video of</p> <p>6 Mr. Waterhouse's deposition?</p> <p>7 A. Nope.</p> <p>8 Q. Same questions now for Mr. Seery, S-e-e-r-y.</p> <p>9 Did you read any portion or the whole of</p> <p>10 Mr. Seery's deposition from last week?</p> <p>11 A. I did not.</p> <p>12 Q. See any of the video?</p> <p>13 A. No.</p> <p>14 Q. Did you see any synopsis or summary of his</p> <p>15 deposition?</p> <p>16 A. No.</p> <p>17 Q. Did you talk to him about his deposition?</p> <p>18 A. I did not.</p> <p>19 Q. Other than talking to Highland's counsel, did</p> <p>20 you talk to anyone about Mr. Seery's deposition?</p> <p>21 A. No.</p> <p>22 Q. Other than talking to Highland's counsel, did</p> <p>23 you talk to anyone about your deposition today?</p> <p>24 A. Just John Morris and Dave Klos.</p> <p>25 Q. When did you talk to Mr. Klos, K-l-o-s?</p>

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<p style="text-align: right;">9</p> <p>1 A. First time about this was last Friday. And</p> <p>2 then again Monday this week. And yesterday. And this</p> <p>3 morning.</p> <p>4 Q. Friday was there any lawyer present during</p> <p>5 your discussion with Mr. Klos?</p> <p>6 A. Yes, every time Mr. Morris was present.</p> <p>7 MR. RUKAVINA: Is it your position that those</p> <p>8 four discussions would be privileged, Counsel?</p> <p>9 MR. MORRIS: Yes.</p> <p>10 MR. RUKAVINA: Then we'll move on.</p> <p>11 Q. (BY MR. RUKAVINA) So we've established the</p> <p>12 four times you talked to Mr. Klos with counsel present.</p> <p>13 Did you do anything else related to or in preparation</p> <p>14 for today's deposition?</p> <p>15 A. Yes, probably went through and reviewed some</p> <p>16 emails, documentation that I may have had that I need</p> <p>17 to refresh memory on.</p> <p>18 Q. These documents and emails that you might</p> <p>19 have reviewed, did you supplementally provide them to</p> <p>20 counsel or anyone else?</p> <p>21 A. Yes.</p> <p>22 Q. This would have been in the last week or</p> <p>23 10 days?</p> <p>24 A. Yes.</p> <p>25 Q. Prior to the last week or 10 days, are you</p>	<p style="text-align: right;">11</p> <p>1 A. Yes.</p> <p>2 Q. And has your CPA license been current since</p> <p>3 then?</p> <p>4 A. Sure has.</p> <p>5 Q. Have you faced any kind of disciplinary</p> <p>6 action as a CPA?</p> <p>7 A. I have not.</p> <p>8 Q. Now, please walk me through your work</p> <p>9 history. Let's say starting with after you graduated</p> <p>10 college.</p> <p>11 A. Sure. December of 2005, which was shortly --</p> <p>12 sorry, 2004, shortly after I graduated from</p> <p>13 North Texas, I started at Highland. It was my first</p> <p>14 real job out of college. I have been there ever since,</p> <p>15 almost 17 years now.</p> <p>16 Have worked in the corporate accounting</p> <p>17 department the entire time. Started off as the AP</p> <p>18 associate, and worked my way up over the years and</p> <p>19 currently am the controller.</p> <p>20 Q. So even when you were getting your MBA and</p> <p>21 CPA you were employed by Highland?</p> <p>22 A. Yes.</p> <p>23 Q. Impressive. You're the controller today you</p> <p>24 mentioned?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">10</p> <p>1 aware that my office served requests for production on</p> <p>2 Highland?</p> <p>3 A. Yes.</p> <p>4 Q. And did you do anything prior to the last</p> <p>5 week or 10 days to try to search both your personal</p> <p>6 records and corporate records for any responsive</p> <p>7 documents?</p> <p>8 A. Not that I recall.</p> <p>9 Q. Is that something that you understand legal</p> <p>10 counsel was charged with?</p> <p>11 A. Yes.</p> <p>12 Q. Let's go briefly now about your background,</p> <p>13 please.</p> <p>14 Where do you live?</p> <p>15 A. I live in Denton, Texas.</p> <p>16 Q. And what is your date of birth, please?</p> <p>17 A. January 26, 1982.</p> <p>18 Q. And walk me through your educational</p> <p>19 background, starting with any postsecondary, if any,</p> <p>20 schooling or college or anything like that.</p> <p>21 A. Sure. Graduated in 2004 from the University</p> <p>22 of North Texas with a degree in finance. Went on to</p> <p>23 get my MBA from SMU in 2009. And then went further and</p> <p>24 got my CPA license I believe in 2015.</p> <p>25 Q. In the state of Texas?</p>	<p style="text-align: right;">12</p> <p>1 Q. That's -- when did you become the controller,</p> <p>2 sometime February or March of this year?</p> <p>3 A. Yes.</p> <p>4 Q. Before you became the controller, what was</p> <p>5 your role at Highland?</p> <p>6 A. Right before that I was assistant controller.</p> <p>7 That was I believe April of 2020. Before that, the</p> <p>8 senior accounting manager, and I held that position for</p> <p>9 years.</p> <p>10 Q. So in May of 2019 would you have been the</p> <p>11 senior -- you said senior account?</p> <p>12 A. Senior accounting manager I believe was my</p> <p>13 title.</p> <p>14 Q. And would that have been your title in May of</p> <p>15 2017?</p> <p>16 A. Yes, I believe so.</p> <p>17 Q. And let's focus now on May 2019 as the senior</p> <p>18 accounting manager. How would you describe your role</p> <p>19 at Highland in May of 2019? What were your duties?</p> <p>20 A. Sure. I helped with treasury management</p> <p>21 function, cash forecasts and things like that. And</p> <p>22 oversaw the financial reporting from the last batch of</p> <p>23 AP to all the way to financials and reporting on</p> <p>24 audits.</p> <p>25 Q. Who did you report to in May of 2019?</p>

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<p style="text-align: right;">13</p> <p>1 A. David Klos.</p> <p>2 Q. What was Mr. Klos' title to your</p> <p>3 understanding back then?</p> <p>4 A. I believe he was the controller.</p> <p>5 Q. And do you have an understanding as to who</p> <p>6 Mr. Klos reported to back then?</p> <p>7 A. Yes, Frank Waterhouse.</p> <p>8 Q. Frank Waterhouse. Who was he in May of 2019?</p> <p>9 A. The CFO.</p> <p>10 Q. Is Mr. Klos still with Highland today?</p> <p>11 A. He is.</p> <p>12 Q. What is his role now?</p> <p>13 A. He's now CFO.</p> <p>14 Q. You mentioned treasury management as of 2019,</p> <p>15 May. What do you mean by treasury management? What is</p> <p>16 that?</p> <p>17 A. Generally speaking, we -- it's not just me as</p> <p>18 one person. We have checks and balances.</p> <p>19 My team would be in charge of sending out</p> <p>20 payments, reconciling bank statements, making sure</p> <p>21 money is in the right accounts, creating cash forecasts</p> <p>22 and reporting on those every week with the CFO and</p> <p>23 oftentimes the CEO.</p> <p>24 Generally that's everything that fell under</p> <p>25 the umbrella.</p>	<p style="text-align: right;">15</p> <p>1 A. Yes, you can say the debtor.</p> <p>2 Q. So when I say the debtor and you say the</p> <p>3 debtor we understand each other to mean Highland</p> <p>4 Capital Management, comma, LP; correct?</p> <p>5 A. Correct.</p> <p>6 Q. I apologize. In the December 2020 period, I</p> <p>7 would imagine that the debtor had its own -- that</p> <p>8 was -- strike that.</p> <p>9 We'll cut to the chase.</p> <p>10 In December of 2020, the debtor was providing</p> <p>11 services to various other entities affiliated with</p> <p>12 Mr. Dondero; correct?</p> <p>13 A. Correct.</p> <p>14 Q. That would have included NexPoint Advisors,</p> <p>15 LP?</p> <p>16 A. Correct.</p> <p>17 Q. And you're aware that NexPoint Advisors was</p> <p>18 the obligor on at least one promissory note to the</p> <p>19 debtor; correct?</p> <p>20 A. Correct.</p> <p>21 Q. And did the debtor in December 2020 provide</p> <p>22 so-called treasury management services to NexPoint</p> <p>23 Advisors?</p> <p>24 MR. MORRIS: Objection to the form of the</p> <p>25 question.</p>
<p style="text-align: right;">14</p> <p>1 Q. And would your description of treasury</p> <p>2 management be the same for the December 2020 period?</p> <p>3 A. Yes.</p> <p>4 Q. Who at Highland or which group at Highland in</p> <p>5 December of 2020 would have been responsible for noting</p> <p>6 that there are certain bills that need to be paid in</p> <p>7 the near or subsequent future.</p> <p>8 By way of, let's say, accounts payable or</p> <p>9 promissory notes or taxes or anything like that?</p> <p>10 A. Can you repeat your question.</p> <p>11 Q. Sure. So obviously, Highland was a pretty</p> <p>12 sophisticated business; correct?</p> <p>13 A. Yeah.</p> <p>14 MR. MORRIS: Objection to the form.</p> <p>15 Q. (BY MR. RUKAVINA) And had various accounts</p> <p>16 payable; right?</p> <p>17 A. Yes.</p> <p>18 Q. And it had maybe, let's just say, certain</p> <p>19 note obligations that it had to pay from time to time;</p> <p>20 correct?</p> <p>21 MR. MORRIS: Objection to the form of the</p> <p>22 question. Do you mean Highland Capital?</p> <p>23 MR. RUKAVINA: I mean Highland Capital</p> <p>24 Management; correct, I'm sorry. The debtor.</p> <p>25 Q. (BY MR. RUKAVINA) Can we say the debtor?</p>	<p style="text-align: right;">16</p> <p>1 THE WITNESS: Yes.</p> <p>2 Q. (BY MR. RUKAVINA) As part of that, in</p> <p>3 December 2020, would it have been employees of the</p> <p>4 debtor that would have scheduled for potential payment,</p> <p>5 subject to approval by NexPoint, NexPoint's future</p> <p>6 obligations as they were coming due?</p> <p>7 A. Yes, we would have scheduled, only with</p> <p>8 approval.</p> <p>9 Q. And would that have included NexPoint's</p> <p>10 obligations on the promissory note to Highland?</p> <p>11 A. Yes.</p> <p>12 Q. Back to your background briefly.</p> <p>13 Do you have any legal training at all?</p> <p>14 A. I do not.</p> <p>15 Q. Do you have any courses, have you taken any</p> <p>16 courses in drafting promissory notes?</p> <p>17 A. No.</p> <p>18 Q. Do you believe that your expertise as a</p> <p>19 certified public accountant gives you any greater</p> <p>20 qualification than anyone else to prepare a promissory</p> <p>21 note?</p> <p>22 MR. MORRIS: Objection to the form of the</p> <p>23 question.</p> <p>24 THE WITNESS: No.</p> <p>25 Q. (BY MR. RUKAVINA) Have you ever prepared or</p>

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<p style="text-align: right;">17</p> <p>1 drafted a promissory note?</p> <p>2 A. That term is probably used loosely. I have</p> <p>3 not completely drafted a promissory note from scratch,</p> <p>4 no.</p> <p>5 Q. And we'll go into the details. Fair to say</p> <p>6 that you have taken a form promissory note and revised</p> <p>7 it?</p> <p>8 A. Absolutely.</p> <p>9 Q. Was this part of your job in May of 2019 at</p> <p>10 Highland?</p> <p>11 A. Yes.</p> <p>12 Q. Going back to the May 2019 time frame, were</p> <p>13 you part of a particular group at Highland, like</p> <p>14 accounting or legal or compliance?</p> <p>15 A. Yes, corporate accounting.</p> <p>16 Q. Corporate accounting. That's what you</p> <p>17 described before about treasury management and</p> <p>18 projections and forecasts?</p> <p>19 A. Yes.</p> <p>20 Q. In May of 2019, was it the practice at</p> <p>21 Highland that corporate accounting would be responsible</p> <p>22 for drafting intercompany promissory notes?</p> <p>23 A. Not necessarily drafting, but updating a</p> <p>24 draft that had been previously produced and provided by</p> <p>25 our legal team, yes.</p>	<p style="text-align: right;">19</p> <p>1 Q. By updating, what do you mean?</p> <p>2 A. There's a few things that would need</p> <p>3 updating, the date.</p> <p>4 Q. Maker?</p> <p>5 A. Maker.</p> <p>6 Q. Amount?</p> <p>7 A. The dollar amount, the interest rate.</p> <p>8 Q. And is it your testimony that the corporate</p> <p>9 accounting group would do these things on its own</p> <p>10 without necessarily the involvement of the legal group?</p> <p>11 MR. MORRIS: Objection to the form of the</p> <p>12 question.</p> <p>13 THE WITNESS: Generally, yes.</p> <p>14 Q. (BY MR. RUKAVINA) Do you have any memory in</p> <p>15 or before May of 2019 if the corporate -- I'm sorry, if</p> <p>16 the legal group became involved in drafting or</p> <p>17 executing any prior intercompany promissory notes?</p> <p>18 A. Yes.</p> <p>19 Q. Explain to me what you remember about that.</p> <p>20 A. I do know that they were involved with</p> <p>21 drafting restructured notes. So taking demand notes</p> <p>22 and turning them into a 30-year amort note.</p> <p>23 That was in 2017. I know for sure that they</p> <p>24 were involved in that because it was something</p> <p>25 different. We weren't just updating a demand note.</p>
<p style="text-align: right;">18</p> <p>1 Q. And Highland in May -- the debtor in May of</p> <p>2 2019 did have a legal department?</p> <p>3 A. Yes.</p> <p>4 Q. Kind of like the corporate accounting, there</p> <p>5 was a separate legal department; correct?</p> <p>6 A. Correct.</p> <p>7 Q. And who would have been in charge of that</p> <p>8 department in May of 2019?</p> <p>9 A. Scott Ellington, E-I-I-n-g-t-o-n.</p> <p>10 Q. In May of 2019 or by May of 2019 was there</p> <p>11 any practice at Highland as to whether its legal</p> <p>12 department would be involved with the drafting or</p> <p>13 execution of any intercompany promissory notes?</p> <p>14 MR. MORRIS: Objection to the form of the</p> <p>15 question.</p> <p>16 THE WITNESS: It depends on the note.</p> <p>17 Q. (BY MR. RUKAVINA) What did it depend on?</p> <p>18 A. Our typical practice is if we have a loan</p> <p>19 with certain affiliates that it's a demand note. We</p> <p>20 have a template that we have used for years that was</p> <p>21 created by either our internal legal team or an outside</p> <p>22 law firm, I'm not sure which.</p> <p>23 The typical practice is always updating a few</p> <p>24 things on that template, getting it executed, and</p> <p>25 filing it in our audit folders.</p>	<p style="text-align: right;">20</p> <p>1 Q. Is it your testimony that to the best of your</p> <p>2 recollection by May of 2019 and in May of 2019 it would</p> <p>3 have been the corporate accounting group that would</p> <p>4 have handled routine intercompany demand notes?</p> <p>5 A. Yes.</p> <p>6 Q. And you can think of more than one instance</p> <p>7 on which that happened?</p> <p>8 A. Yes.</p> <p>9 Q. And this is not a memory test, but going back</p> <p>10 in time can you try to give an estimate of what year</p> <p>11 that first started happening, that the corporate</p> <p>12 accounting would handle the drafting or execution of</p> <p>13 intercompany demand notes?</p> <p>14 A. As far as I can remember.</p> <p>15 Q. Is it your testimony that as -- maybe even</p> <p>16 going back as far as 2005 there were intercompany</p> <p>17 demand notes?</p> <p>18 A. Yes.</p> <p>19 Q. I don't know how to ask this question, but</p> <p>20 was this a significant thing in corporate accounting or</p> <p>21 just another routine deal when you handled demand</p> <p>22 notes?</p> <p>23 MR. MORRIS: Objection to the form of the</p> <p>24 question.</p> <p>25 THE WITNESS: This is a routine job duty that</p>

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<p style="text-align: right;">21</p> <p>1 we routinely did.</p> <p>2 Q. (BY MR. RUKAVINA) Between 2005 and 2019, do</p> <p>3 you remember any maker on these intercompany demand</p> <p>4 notes actually being required to pay a demand note, in</p> <p>5 other words, Highland making demand?</p> <p>6 A. Not that I can specifically recall.</p> <p>7 Q. Do you have any recollection as to what</p> <p>8 happened to these intercompany demand notes over the</p> <p>9 years between 2005 and 2019?</p> <p>10 A. Yeah. Typically anytime specifically Jim</p> <p>11 Dondero would need to move money between related</p> <p>12 parties, he would pay down -- when I say him, he would</p> <p>13 have us in corporate accounting move money around, pay</p> <p>14 off notes, reissue new notes somewhere else.</p> <p>15 So a way to move money around between his</p> <p>16 entities.</p> <p>17 Q. So let's use just hypotheticals here so that</p> <p>18 I'm not trying to pin you down to any specific fact.</p> <p>19 But between 2005 and 2019, is it fair to say</p> <p>20 that if some Dondero entity that's not the debtor</p> <p>21 needed money and the debtor had money, then Dondero</p> <p>22 would have the debtor lend money to that entity on a</p> <p>23 demand note basis?</p> <p>24 A. So long as they have the cash available to do</p> <p>25 so.</p>	<p style="text-align: right;">23</p> <p>1 A. If the debtor needed cash to lend to another</p> <p>2 entity.</p> <p>3 Q. I see. So again, it's all one big happy</p> <p>4 family, and whoever needed cash, the cash moved around;</p> <p>5 correct?</p> <p>6 A. Correct.</p> <p>7 Q. Was it Mr. Dondero that basically was the</p> <p>8 only deciding person in each instance that you're aware</p> <p>9 of in those 14 years as to when a note would be made or</p> <p>10 repaid?</p> <p>11 A. I can't answer specifically to that. Most of</p> <p>12 my direction came from our CFO at the time,</p> <p>13 Frank Waterhouse. So what conversations he would have</p> <p>14 with Jim Dondero, I can't answer to that. But I would</p> <p>15 suspect so, yes.</p> <p>16 Q. And in May of 2019 or by May of 2019, did you</p> <p>17 communicate personally, by email or telephone, in</p> <p>18 person, periodically with Jim Dondero?</p> <p>19 A. I can't say periodically, no.</p> <p>20 Q. Well, I'm not trying to put words in your</p> <p>21 mouth. Is it fair to say that you kind of -- your</p> <p>22 communications stopped with Mr. Waterhouse and</p> <p>23 Waterhouse communicated with Dondero, as opposed to you</p> <p>24 regularly communicating with Dondero?</p> <p>25 A. That's typical, yes.</p>
<p style="text-align: right;">22</p> <p>1 Q. "They" being the debtor?</p> <p>2 A. Debtor, yes.</p> <p>3 Q. And is it fair to say, then, again</p> <p>4 hypothetically without any specifics, that if the</p> <p>5 debtor maybe from time to time needed money and one of</p> <p>6 these other entities had cash, then Dondero would cause</p> <p>7 that other entity to pay down the demand note?</p> <p>8 MR. MORRIS: Objection to the form of the</p> <p>9 question.</p> <p>10 THE WITNESS: Can you repeat that.</p> <p>11 Q. (BY MR. RUKAVINA) Sure. So I think you</p> <p>12 mentioned that from time to time these entities would</p> <p>13 pay down these demand notes?</p> <p>14 A. To the debtor?</p> <p>15 Q. To the debtor.</p> <p>16 A. Yes.</p> <p>17 Q. And is that, hypothetically again, is that</p> <p>18 because on occasion the debtor might have needed cash</p> <p>19 and these entities had the cash, so Dondero would have</p> <p>20 them pay back the note?</p> <p>21 MR. MORRIS: Objection to the form of the</p> <p>22 question.</p> <p>23 THE WITNESS: Yes, that could be a reason.</p> <p>24 Q. (BY MR. RUKAVINA) Can you think of any other</p> <p>25 reason in those 14 years?</p>	<p style="text-align: right;">24</p> <p>1 Q. Can you think of any instances in which</p> <p>2 Mr. Dondero gave you any instructions or you came to</p> <p>3 him seeking any instructions, without some intermediary</p> <p>4 between the two of you?</p> <p>5 A. No, usually Frank was present.</p> <p>6 Q. Would you categorize Mr. Waterhouse as kind</p> <p>7 of guarding with jealousy his access to Mr. Dondero?</p> <p>8 MR. MORRIS: Objection to the form of the</p> <p>9 question.</p> <p>10 THE WITNESS: No.</p> <p>11 Q. (BY MR. RUKAVINA) What kind of boss was he</p> <p>12 in May of 2019? Was he laid back, or was he a jerk?</p> <p>13 Was he demanding? How would you characterize him in</p> <p>14 May of 2019?</p> <p>15 MR. MORRIS: Objection to the form of the</p> <p>16 question.</p> <p>17 THE WITNESS: I would say he was a good boss.</p> <p>18 Q. (BY MR. RUKAVINA) You think he was competent</p> <p>19 as far as his job went?</p> <p>20 A. Yes, very competent.</p> <p>21 Q. Do you think he was competent as far as his</p> <p>22 job went in December of 2020?</p> <p>23 A. Yes.</p> <p>24 Q. January 2021?</p> <p>25 A. Yes.</p>

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<p style="text-align: right;">25</p> <p>1 Q. Was he patient and understanding as a boss?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Was he ever condescending or rude to</p> <p>4 anyone in your presence?</p> <p>5 A. No.</p> <p>6 Q. So you're the controller today at Highland,</p> <p>7 the debtor, the reorganized debtor; right?</p> <p>8 A. Yes.</p> <p>9 Q. And who do you report to? You mentioned</p> <p>10 Mr. Klos is the CFO?</p> <p>11 A. Yes.</p> <p>12 Q. And do you also report to Mr. Seery?</p> <p>13 A. Yes, I think everybody does.</p> <p>14 Q. And I don't need to know details, but I take</p> <p>15 it you're on a salary from reorganized Highland?</p> <p>16 A. Yes.</p> <p>17 Q. Is any part of your compensation merit or</p> <p>18 bonus based?</p> <p>19 A. It could potentially be.</p> <p>20 Q. Have you had any discussions with Mr. Seery</p> <p>21 or Mr. Klos about some sort of bonus compensation?</p> <p>22 A. Yes.</p> <p>23 Q. Has anything been agreed to?</p> <p>24 A. Yes.</p> <p>25 Q. And again, I don't need to know the exact</p>	<p style="text-align: right;">27</p> <p>1 A. Correct.</p> <p>2 Q. And how Highland, reorganized Highland</p> <p>3 collects these promissory notes is going to play no</p> <p>4 part in your base and bonus compensation to your</p> <p>5 understanding; is that correct?</p> <p>6 A. To my knowledge, yes.</p> <p>7 Q. So you have no direct or indirect stake in</p> <p>8 the outcome of these litigations?</p> <p>9 A. No.</p> <p>10 Q. And you understand that I represent HCMFA and</p> <p>11 NexPoint?</p> <p>12 A. Yes.</p> <p>13 Q. And these court reporters are not familiar</p> <p>14 with some of our terminology. NAP [verbatim], if we</p> <p>15 say that, that means NexPoint; right?</p> <p>16 A. Uh-huh.</p> <p>17 Q. You have to say yes or no.</p> <p>18 A. Yes, NPA, NexPoint.</p> <p>19 Q. NPA. And when we say NexPoint, you and I are</p> <p>20 meaning NexPoint Advisors, LP; right?</p> <p>21 A. Yes.</p> <p>22 Q. And when we say HCMFA, we're meaning Highland</p> <p>23 Capital Management Fund Advisors, LP, yes?</p> <p>24 A. Yes.</p> <p>25 Q. What is your understanding of the two</p>
<p style="text-align: right;">26</p> <p>1 numbers. What would your bonus compensation consist</p> <p>2 of? How would it be decided?</p> <p>3 A. It's actually -- was decided when I agreed to</p> <p>4 stay on the Highland team back in February 2021, so</p> <p>5 it's in my employment agreement.</p> <p>6 Q. So what's your bonus compensation?</p> <p>7 A. I'm not sure I understand what you're asking.</p> <p>8 Q. So is the bonus discretionary on the part of</p> <p>9 Highland?</p> <p>10 A. No, it's a set amount.</p> <p>11 Q. And what triggers it or governs the set</p> <p>12 amount?</p> <p>13 A. Just it gets paid out on a certain date of</p> <p>14 the year. It's very straightforward, set out in my</p> <p>15 employment agreement.</p> <p>16 Q. Is it irrespective of the performance of the</p> <p>17 reorganized debtor?</p> <p>18 A. Yes.</p> <p>19 Q. So why do you call it a bonus instead of base</p> <p>20 compensation?</p> <p>21 A. That's what it's called in my agreement.</p> <p>22 Q. So your base compensation and your bonus,</p> <p>23 it's your testimony, you're going to earn it</p> <p>24 irrespective of whether reorganized Highland does good</p> <p>25 or bad with respect to its profitability?</p>	<p style="text-align: right;">28</p> <p>1 lawsuits, the one against HCMFA and the one against</p> <p>2 NexPoint, that you're being deposed on today?</p> <p>3 MR. MORRIS: Objection to the form of the</p> <p>4 question.</p> <p>5 Q. (BY MR. RUKAVINA) Who is suing who and for</p> <p>6 what?</p> <p>7 A. I don't know all the details.</p> <p>8 Q. So we've established that you've discussed</p> <p>9 these lawsuits in the last week or a little bit more</p> <p>10 with legal counsel. I don't want to talk about that.</p> <p>11 Prior to these recent discussions, did you</p> <p>12 have any discussions with anyone at Highland about its</p> <p>13 lawsuits against HCMFA and NexPoint on promissory</p> <p>14 notes?</p> <p>15 A. Repeat that again.</p> <p>16 Q. Sure. So remember we're excluding the recent</p> <p>17 discussions in the last week or 10 days with counsel;</p> <p>18 right?</p> <p>19 A. Okay.</p> <p>20 Q. Are you aware that in January of 2021 the</p> <p>21 debtor sued NexPoint to collect on a promissory note?</p> <p>22 A. I'm aware that demand notices were sent.</p> <p>23 Q. So until recently you weren't aware that a</p> <p>24 lawsuit had been filed?</p> <p>25 A. There's a lot of lawsuits filed. I can't</p>

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<p style="text-align: right;">29</p> <p>1 keep track of what is what or what we're talking about</p> <p>2 at certain times.</p> <p>3 Q. But you have no distinct memory of that?</p> <p>4 A. Correct.</p> <p>5 Q. And same question for the lawsuit that the</p> <p>6 debtor filed against HCMFA in January.</p> <p>7 Do you have any specific memory of that</p> <p>8 lawsuit having been filed?</p> <p>9 A. Not specifically.</p> <p>10 Q. You mentioned that you're aware that on or</p> <p>11 before January 2021, demand letters had been sent?</p> <p>12 A. Yes.</p> <p>13 Q. Did you play any role in either drafting</p> <p>14 those demand letters or the decision to send them?</p> <p>15 A. No.</p> <p>16 Q. So going back to my question about these</p> <p>17 lawsuits, do you have any memory of anyone asking</p> <p>18 you -- again, excluding the last week or two.</p> <p>19 Do you have any memory of anyone asking you</p> <p>20 to do anything with respect to either or both of these</p> <p>21 lawsuits?</p> <p>22 A. No.</p> <p>23 Q. You have no memory of Mr. Waterhouse,</p> <p>24 Mr. Klos, Mr. Surgent, or Mr. Seery asking for any</p> <p>25 background information or your input at all on these</p>	<p style="text-align: right;">31</p> <p>1 about either or both of these two promissory notes?</p> <p>2 A. Sure, yes.</p> <p>3 Q. What do you remember?</p> <p>4 A. I remember seeing them because I've recently</p> <p>5 looked at them. I see them all the time in our loan</p> <p>6 tracking spreadsheets. My team would have been</p> <p>7 responsible for the whole process that I explained</p> <p>8 before when it comes to a promissory note.</p> <p>9 Q. And --</p> <p>10 MR. MORRIS: Are you finished?</p> <p>11 THE WITNESS: Yes.</p> <p>12 Q. (BY MR. RUKAVINA) And we have an email here</p> <p>13 that might give some more context to that if I can find</p> <p>14 it here.</p> <p>15 This will be Exhibit 3. This is an email</p> <p>16 from David Klos to corporate accounting dated May 2,</p> <p>17 2019.</p> <p>18 (Whereupon, Exhibit 3 was marked for</p> <p>19 identification.)</p> <p>20 Q. (BY MR. RUKAVINA) Do you see this email,</p> <p>21 ma'am?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Corporate accounting, would that email</p> <p>24 group have included you?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">30</p> <p>1 two lawsuits?</p> <p>2 MR. MORRIS: Better not have been --</p> <p>3 THE WITNESS: No.</p> <p>4 Q. (BY MR. RUKAVINA) Who did I say? Did I</p> <p>5 misspeak? Okay.</p> <p>6 Now we're going to have some exhibits here.</p> <p>7 And do you have the labels?</p> <p>8 Let's take a minute break off the record.</p> <p>9 (Off the record.)</p> <p>10 Q. (BY MR. RUKAVINA) Ms. Hendrix, I'm going to</p> <p>11 provide to you a promissory note in the original</p> <p>12 principal amount of \$5 million from HCMFA. This is the</p> <p>13 PDF version of this as filed with the Court for</p> <p>14 collection. It's going to be Exhibit 1.</p> <p>15 (Whereupon, Exhibit 1 was marked for</p> <p>16 identification.)</p> <p>17 Q. (BY MR. RUKAVINA) Before you look at</p> <p>18 Exhibit 1, I'm going to do the same thing for</p> <p>19 Exhibit 2, which is a promissory note from HCMFA for</p> <p>20 \$2.4 million, dated May 2, 2019.</p> <p>21 (Whereupon, Exhibit 2 was marked for</p> <p>22 identification.)</p> <p>23 Q. (BY MR. RUKAVINA) Again, Ms. Hendrix, these</p> <p>24 are the PDF versions of these notes as filed with the</p> <p>25 Court. Sitting here today, do you remember anything</p>	<p style="text-align: right;">32</p> <p>1 Q. And this email says, Kristin, can you or</p> <p>2 Hayley. Do you think that Kristin was you?</p> <p>3 A. I do.</p> <p>4 Q. Do you remember receiving this email?</p> <p>5 A. Not explicitly.</p> <p>6 Q. So it says Blair. Who would Blair be?</p> <p>7 A. Blair was our AP associate.</p> <p>8 Q. What is her last name?</p> <p>9 A. At this time it would have been Roeber,</p> <p>10 R-o-e-b-e-r.</p> <p>11 Q. Okay. And did it subsequently change?</p> <p>12 A. Yes, it's now Hillis, H-i-l-l-i-s.</p> <p>13 Q. Please send \$2.4 million from HCMPLP to HCMFA.</p> <p>14 This is a new interco loan. Kristin, can you or Hayley</p> <p>15 please prep a note for execution. I'll have further</p> <p>16 instructions later today, but please process this</p> <p>17 payment as soon as possible.</p> <p>18 Did I read that correctly?</p> <p>19 A. Yes.</p> <p>20 Q. Do you have any memory of whether this email</p> <p>21 relates to Exhibit 2, the \$2.4 million promissory note?</p> <p>22 A. It seems like it does, same date, same</p> <p>23 amount.</p> <p>24 Q. Do you have any memory, or in reviewing your</p> <p>25 files did you see any similar email or document that</p>

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<p style="text-align: right;">33</p> <p>1 would have related to Exhibit 1, the \$5 million</p> <p>2 promissory note?</p> <p>3 A. Yes. I believe there's another email for</p> <p>4 that one.</p> <p>5 Q. And do you believe that you provided that to</p> <p>6 counsel?</p> <p>7 A. Yes.</p> <p>8 Q. Recently or some time ago?</p> <p>9 A. Well, I don't think I provided it, so I'm not</p> <p>10 sure when they got it. I know it has been provided.</p> <p>11 Q. You know that it has?</p> <p>12 A. Uh-huh.</p> <p>13 Q. How do you know?</p> <p>14 A. Because I've seen it.</p> <p>15 Q. In the production that was produced to me?</p> <p>16 A. Yes.</p> <p>17 Q. And also from a David Klos?</p> <p>18 A. This one, or on the -- when I say this one,</p> <p>19 on the \$2.4 million or the 5-?</p> <p>20 Q. On the \$5 million note.</p> <p>21 A. I'm not sure.</p> <p>22 Q. Okay. Let me make sure I understand you</p> <p>23 correctly.</p> <p>24 Sitting here today you believe that there is</p> <p>25 another email referencing the \$5 million loan that has</p>	<p style="text-align: right;">35</p> <p>1 the door, is typically how this works.</p> <p>2 Q. Is the answer generally the same for the</p> <p>3 \$5 million note?</p> <p>4 A. Yes.</p> <p>5 Q. So is it fair to say that typically,</p> <p>6 obviously not every time, but typically your corporate</p> <p>7 accounting group when it would see intercompany</p> <p>8 transfers in large amounts would believe that they were</p> <p>9 loans?</p> <p>10 MR. MORRIS: Objection to the form of the</p> <p>11 question.</p> <p>12 THE WITNESS: Typically they were loans.</p> <p>13 There's not really another way to get money from one</p> <p>14 entity to another. And if they were papered as a loan,</p> <p>15 that means we were told to set it up that way.</p> <p>16 Q. (BY MR. RUKAVINA) What do you mean papered</p> <p>17 as a loan? Aren't you papering it as a loan when</p> <p>18 someone makes the promissory note?</p> <p>19 A. Yes, because we're told by somebody to do</p> <p>20 that.</p> <p>21 Q. And in this instance, Mr. Klos on Exhibit 3</p> <p>22 told the group that this was a loan; right?</p> <p>23 A. Correct. But he would have spoken with</p> <p>24 Frank Waterhouse or Jim Dondero prior to that, before</p> <p>25 telling anybody to do that.</p>
<p style="text-align: right;">34</p> <p>1 been produced to my office?</p> <p>2 A. Yes. I believe so.</p> <p>3 Q. Okay. And going off memory, did it kind of</p> <p>4 say the same thing as this Exhibit 3 except that it</p> <p>5 referenced \$5 million?</p> <p>6 MR. MORRIS: Objection to the form of the</p> <p>7 question.</p> <p>8 THE WITNESS: Generally, should have said the</p> <p>9 similar situation, yeah.</p> <p>10 Q. (BY MR. RUKAVINA) So Mr. Klos says, this is</p> <p>11 a new interco loan, for Exhibit 3. Other than what he</p> <p>12 told you, that this is an intercompany loan, did anyone</p> <p>13 else tell you or did you have any other information on</p> <p>14 May 2, 2019 that this was a loan?</p> <p>15 A. I don't specifically recall these</p> <p>16 conversations, but I can tell you our normal practice</p> <p>17 would be we would either likely be in a cash meeting --</p> <p>18 and I say "we." Would have been myself, Dave Klos,</p> <p>19 Frank Waterhouse, potentially even Jim Dondero.</p> <p>20 But I don't recall conversations on this</p> <p>21 specific date. But general practice is we would talk</p> <p>22 about it.</p> <p>23 Oftentimes, Frank would either call Dave or I</p> <p>24 or stop by and tell us that, we need to send money to</p> <p>25 an affiliate, paper up a new loan, let's get a wire out</p>	<p style="text-align: right;">36</p> <p>1 Q. Okay. And do you have any knowledge that he</p> <p>2 did speak to Mr. Waterhouse or Mr. Dondero before</p> <p>3 sending this email?</p> <p>4 A. Again, I don't have specific knowledge on the</p> <p>5 exact conversations, but that's always how it has</p> <p>6 worked.</p> <p>7 Q. That's how it was for 14 or 15 years;</p> <p>8 correct?</p> <p>9 A. Yes.</p> <p>10 Q. But you're logically assuming that it</p> <p>11 happened here. You don't know that it happened here;</p> <p>12 correct?</p> <p>13 MR. MORRIS: Objection to the form of the</p> <p>14 question.</p> <p>15 THE WITNESS: I would have to be fairly</p> <p>16 certain that it did, even though I can't recall</p> <p>17 specific conversations.</p> <p>18 Q. (BY MR. RUKAVINA) Did you ask Mr. Klos about</p> <p>19 who told him that this is a new intercompany loan on</p> <p>20 Exhibit 3?</p> <p>21 A. No. It's quite possible I was involved in</p> <p>22 the conversation. I reported to him. I wouldn't</p> <p>23 question his authority.</p> <p>24 Q. Did you ask Mr. Klos who told him that the</p> <p>25 \$5 million deal was also an intercompany loan?</p>

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<p style="text-align: right;">37</p> <p>1 A. I did not ask that specific question that I 2 can recall.</p> <p>3 Q. Did you ask Mr. Waterhouse whether either of 4 these transactions were loans?</p> <p>5 A. I'm sure Mr. Waterhouse is the one that told 6 us they were loans. We wouldn't just paper up a loan, 7 send money out and call it a loan and account for it 8 that way, unless somebody specifically told us.</p> <p>9 Q. Do you have any memory of Mr. Waterhouse 10 orally or in writing or email or in any way, shape, or 11 form on or about May 2 or 3, 2019 telling you that the 12 2.4 million or \$5 million transfers were intercompany 13 loans?</p> <p>14 A. No specific knowledge of exact conversations, 15 but I'm certain that those conversations were had 16 because that's the only way that we would have papered 17 up a loan, sent money out as a loan, had them on our 18 financials for two years.</p> <p>19 Q. So you're saying that this email, Exhibit 3, 20 from Mr. Klos was not enough, that there would have 21 been other things that happened to make you and other 22 people in your group confident that these were loans?</p> <p>23 A. Yes.</p> <p>24 Q. And these other things would have been in 25 person or by email?</p>	<p style="text-align: right;">39</p> <p>1 a consent fee that the advisor of the Global Allocation 2 Fund had promised to pay to shareholders of that fund, 3 and it was in the amount of \$5 million roughly.</p> <p>4 So both of these loans were for those 5 purposes respectfully.</p> <p>6 Q. And were you in May of 2019 also aware that 7 in addition to the \$2.4 million, there was another more 8 than \$5 million paid to that fund by HCMFA's insurer as 9 compensation for the NAV error?</p> <p>10 A. By the insurance company, yes.</p> <p>11 Q. So the \$7.4 million, you understood then was 12 a loan as opposed to compensation to HCMFA?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Did you understand in May of 2019 that 15 it had been the debtor and its valuation team that 16 caused that NAV error?</p> <p>17 MR. MORRIS: Objection to the form of the 18 question.</p> <p>19 THE WITNESS: I can't answer that. I was not 20 involved with the activities leading up to the NAV 21 error.</p> <p>22 Q. (BY MR. RUKAVINA) How do you know that the 23 \$7.4 million were being transferred for the NAV error 24 and consent fee?</p> <p>25 A. Because I do know about both of those</p>
<p style="text-align: right;">38</p> <p>1 A. Most likely in person via phone call.</p> <p>2 Q. Okay. So again, you have no specific memory 3 of it, but based on the 14-year pattern and conduct you 4 believe that you would have discussed these two 5 transfers with Mr. Waterhouse and he would have told 6 you these are loans?</p> <p>7 MR. MORRIS: Objection to the form of the 8 question.</p> <p>9 THE WITNESS: Correct.</p> <p>10 Q. (BY MR. RUKAVINA) And then would he have 11 told you to take care of the promissory notes, or was 12 that Mr. Klos here in Exhibit 3?</p> <p>13 A. It could have been both. It's clearly Dave 14 in this email, but Frank could have also said that to 15 me.</p> <p>16 Q. Now, do you -- strike that.</p> <p>17 In May of 2019, did you know or were you told 18 why these \$7.4 million were being transferred from the 19 debtor to HCMFA?</p> <p>20 A. Yes. I do have recollection that -- I do 21 know that there were two big events in May 2019. 22 2.4 million was related to a TerreStar NAV error, with 23 one of the funds advised by HCMFA. That's Global 24 Allocation Fund.</p> <p>25 Similar with the \$5 million loan. There was</p>	<p style="text-align: right;">40</p> <p>1 instances and I do know that HCMFA needed to pay these 2 dollar amounts for both of those.</p> <p>3 Q. And you knew that in May of 2019?</p> <p>4 A. Yes.</p> <p>5 Q. How did you know that in May of 2019?</p> <p>6 A. It was lots of discussions had been going on 7 around both of these issues for months. These weren't 8 surprises to anybody.</p> <p>9 Q. So although you weren't involved directly 10 with the NAV error issues, it was more or less common 11 knowledge in your accounting group?</p> <p>12 A. Correct.</p> <p>13 Q. Do you have any knowledge at all as to 14 whether Mr. Dondero decided to transfer these 15 \$7.4 million not as a loan, but to compensate HCMFA for 16 the debtor's alleged liability?</p> <p>17 A. Have not heard of that.</p> <p>18 Q. Ever?</p> <p>19 A. Never.</p> <p>20 Q. But you also never heard Mr. Dondero say that 21 these \$7.4 million were a loan; correct?</p> <p>22 A. That was not told to me directly.</p> <p>23 Q. Again, you're logically assuming that based 24 on many instances of intercompany transfers in the 25 14 years prior to that?</p>

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<p style="text-align: right;">41</p> <p>1 MR. MORRIS: Objection to the form of the</p> <p>2 question. Mischaracterizes the testimony.</p> <p>3 THE WITNESS: Correct.</p> <p>4 Q. (BY MR. RUKAVINA) I think you answered</p> <p>5 correct?</p> <p>6 A. Correct.</p> <p>7 Q. And you mentioned that after these notes, you</p> <p>8 saw them on internal financials and that reinforces</p> <p>9 your view that these were loans?</p> <p>10 A. Correct.</p> <p>11 Q. But as of May 2 and 3, 2019, no one had told</p> <p>12 you directly that these are loans?</p> <p>13 MR. MORRIS: Objection to the form of the</p> <p>14 question. It's in writing.</p> <p>15 THE WITNESS: That's not what I'm saying at</p> <p>16 all.</p> <p>17 Q. (BY MR. RUKAVINA) Other than Mr. Klos' email</p> <p>18 or emails, no one told you on May 2 or May 3, 2019 that</p> <p>19 you remember today that these were loans?</p> <p>20 A. It quite possibly could have been told to me</p> <p>21 in addition to this email.</p> <p>22 Q. I understand. You just have no memory of</p> <p>23 that today; correct?</p> <p>24 A. Correct.</p> <p>25 Q. Is there anything that you can think of</p>	<p style="text-align: right;">43</p> <p>1 answers don't count and I'm in trouble.</p> <p>2 6 will be the \$5 million note, and 7 will be</p> <p>3 the \$2.4 million note.</p> <p>4 (Whereupon, Exhibits 6 & 7 were marked for</p> <p>5 identification.)</p> <p>6 Q. (BY MR. RUKAVINA) Okay. So Exhibit 4 and 5</p> <p>7 are the Word documents. Do you have any memory of you</p> <p>8 doing anything with respect to these two Word</p> <p>9 documents?</p> <p>10 A. I don't have specific memory, but generally</p> <p>11 speaking, it was my job to update promissory note</p> <p>12 templates and create promissory notes.</p> <p>13 Q. So do you believe that -- we discussed</p> <p>14 earlier that your group would have used a template and</p> <p>15 that it would have made changes reflecting the maker,</p> <p>16 amount, date, interest rate.</p> <p>17 Do you believe you were the one with respect</p> <p>18 to 4 and 5 that updated that template to create 4</p> <p>19 and 5?</p> <p>20 A. I'm sure that I was, yes.</p> <p>21 Q. Well, Exhibit 6 -- do you know what metadata</p> <p>22 is?</p> <p>23 A. Sort of.</p> <p>24 Q. What's your understanding of what metadata</p> <p>25 is?</p>
<p style="text-align: right;">42</p> <p>1 sitting here today to refresh your memory on that</p> <p>2 point?</p> <p>3 A. I do not think so. I'm sure there was</p> <p>4 conversation that unfortunately would not be in an</p> <p>5 email.</p> <p>6 Q. Now, we have the Word documents, the Word</p> <p>7 version of these two promissory notes, and you're going</p> <p>8 to have rely on me that I printed these out as</p> <p>9 Mr. Morris sent to me. If I'm misleading you on that,</p> <p>10 then I'm in trouble and your answers don't count.</p> <p>11 So please assume that I didn't doctor these</p> <p>12 and that I printed them out as they were prepared to</p> <p>13 me; okay?</p> <p>14 A. Yes.</p> <p>15 Q. So Exhibit 4 will be the \$5 million note and</p> <p>16 Exhibit 5 will be the 2.4 million.</p> <p>17 (Whereupon, Exhibits 4 & 5 were marked for</p> <p>18 identification.)</p> <p>19 Q. (BY MR. RUKAVINA) Before I ask about 4 and</p> <p>20 5, to be fair to you and refresh your memory, I'm going</p> <p>21 to provide you printouts of the metadata, metadata --</p> <p>22 I'm not sure how to better say that -- for both notes.</p> <p>23 And again I'm representing to you that I</p> <p>24 printed out the metadata without doctoring it, so</p> <p>25 please assume that's true, and if it's not, your</p>	<p style="text-align: right;">44</p> <p>1 A. Just in context from speaking on it recently,</p> <p>2 it's going to tell you who made changes to the</p> <p>3 documents, is what I would assume.</p> <p>4 MR. RUKAVINA: Go off the record for one</p> <p>5 second.</p> <p>6 (Off the record.)</p> <p>7 Q. (BY MR. RUKAVINA) So a little bit of error</p> <p>8 on my part. We'll have some more metadata, but we can</p> <p>9 still talk about 6 and 7.</p> <p>10 It says the author JFORSHEE, J-F-O-R-S-H-E-E.</p> <p>11 Do you recall or do you know who that person was?</p> <p>12 A. I recognize the name, and it makes sense.</p> <p>13 This says Strasburger is the company. I think he was</p> <p>14 one of the lawyers that we had used at some point in</p> <p>15 time.</p> <p>16 Q. Strasburger is a law firm?</p> <p>17 A. Yes.</p> <p>18 Q. And then it says, so Exhibit 6 created May 3,</p> <p>19 Exhibit 7 created May 2, modified, accessed. Does that</p> <p>20 to the best of your understanding comport with when</p> <p>21 Exhibits 4 and 5 were actually created?</p> <p>22 A. Can you repeat that.</p> <p>23 Q. Yeah. We'll wait for the rest of the</p> <p>24 metadata. But let's go back to 4 and 5.</p> <p>25 In and by May 2019 I think you mentioned that</p>

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<p style="text-align: right;">45</p> <p>1 it was your job to, I think you said update promissory 2 notes? 3 MR. MORRIS: Objection to the form of the 4 question. 5 Q. (BY MR. RUKAVINA) Let me take that question 6 back. 7 You testified earlier that your group would 8 have taken a template and used it to create or prepare 9 a new promissory note; right? 10 A. Right. 11 Q. How would you call that process? What word 12 would you use for that process? 13 A. Let's call it papering the loan. 14 Q. In May of 2019, was it your job to paper the 15 loan? 16 A. Yes. 17 Q. Would anyone else at the corporate accounting 18 group have been responsible to paper a loan? 19 A. At that time, I don't think so. I think I 20 was the one doing it. 21 Q. I think you mentioned that you think you 22 papered the loan, respecting Exhibits 4 and 5; correct? 23 A. Correct. 24 Q. You have no distinct present memory of 25 papering 4 and 5; correct?</p>	<p style="text-align: right;">47</p> <p>1 that Mr. Waterhouse's signature there appears on the 2 Word document as an image. 3 A. Uh-huh. 4 Q. Do you have any memory of whether there was 5 an image that someone would have affixed of 6 Mr. Waterhouse's signature to promissory notes? 7 A. Yes. We typically always -- he was 8 completely fine with having documentations -- sorry, 9 having documents signed or executed with his 10 e-signature. 11 Q. Would these pictures of his signature have 12 been his e-signature in May of 2019? 13 A. Yes. 14 Q. So let's just clarify that because I don't 15 want there to be any confusion. 16 I know there's some computer programs out 17 there that are restrictive and have passwords before 18 any signature is printed. And then there's some people 19 that use a stamp or an image; right? 20 MR. MORRIS: Objection to the form of the 21 question. 22 Q. (BY MR. RUKAVINA) Are you following me? 23 A. I follow you. 24 Q. In May of 2019, did Mr. Waterhouse have any 25 specific program that would have to -- you would have</p>
<p style="text-align: right;">46</p> <p>1 A. Correct. 2 Q. Can you think of anyone else at the corporate 3 accounting group that would have papered 4 and 5? 4 MR. MORRIS: Objection to the form of the 5 question. 6 THE WITNESS: The only other person that 7 could have would either be Dave Klos or Hayley Eliason. 8 Q. (BY MR. RUKAVINA) What was Hayley's role in 9 May of 2019? 10 A. She was the accountant. I can't recall her 11 specific title. 12 Q. Now, in May of 2019 when you papered a loan, 13 would you have consulted with either internal or 14 external legal before finishing that loan or presenting 15 it for signature or anything else? 16 A. Not if it was just our standard demand note 17 that we already had a template on. 18 Q. So would it have been your general course in 19 May of 2019, if you prepared Exhibits 4 and 5, not to 20 seek advice from internal or legal before proceeding 21 with these notes? 22 A. With these two specific notes? 23 Q. Yes. 24 A. Yes. 25 Q. If we flip the page, I'll represent to you</p>	<p style="text-align: right;">48</p> <p>1 to go through before it would spit out his e-signature, 2 or was he fine with you and his staff using an image 3 like this? 4 A. He was fine with using his e-signature, and 5 what is on these documents was that exact e-signature. 6 So I don't know if he had -- I don't know how it was 7 created originally. 8 Q. The e-signature? 9 A. E-signature. 10 Q. Do you have any memory with respect to 11 Exhibits 4 and 5 of getting Mr. Waterhouse's specific 12 approval to use his e-signature? 13 A. I don't have exact specific memory, same as 14 conversations on these loans. But he would have had to 15 approve this loan in the dollar amount, the day. 16 He would have been the one directing us to 17 create these loans. In past practice he has always 18 approved using his e-signature to execute documents. 19 Q. How would he have approved Exhibits 4 and 5? 20 By that, I mean by email or memorandum? How would he 21 have approved it in May of 2019? 22 MR. MORRIS: Objection to the form of the 23 question. 24 THE WITNESS: I would assume that, as I've 25 stated previously, these directions were coming</p>

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<p style="text-align: right;">49</p> <p>1 directly from him to paper a loan. These changes that 2 are made are only to the dollar amount. Interest rate 3 is pulled right off the IRS website. 4 That is his approval to paper a loan and in 5 fact execute or approve the loan. 6 Q. (BY MR. RUKAVINA) In May of 2019, would 7 Mr. Waterhouse -- what was his practice as far as using 8 an ink signature on documents as opposed to an 9 e-signature? Did he have a practice? 10 MR. MORRIS: Objection to the form of the 11 question. 12 THE WITNESS: He has never specifically said, 13 on certain documents I would like to ink it with my 14 signature. Probably at this time, 99 percent of the 15 stuff my team got his signature on was his e-signature. 16 I think it just depended on the group and what it was. 17 Q. (BY MR. RUKAVINA) So how would he authorize 18 you or your team to use his e-signature for any given 19 document in May of 2019? 20 MR. MORRIS: Objection to the form of the 21 question. 22 THE WITNESS: Through the conversations that 23 would have been had before these emails went out saying 24 paper loan. 25 Q. (BY MR. RUKAVINA) And -- okay. So, and</p>	<p style="text-align: right;">51</p> <p>1 Q. But you have no memory of that authority or 2 approval, specifically for 4 and 5? 3 MR. MORRIS: Objection. Asked and answered 4 about five times. 5 THE WITNESS: Same as my answer I just gave. 6 Q. (BY MR. RUKAVINA) And I think you mentioned 7 that in your years at Highland your team papered 8 hundreds of loans? 9 A. Yeah. 10 Q. In your time at Highland, is it your 11 testimony that the accounting -- corporate accounting 12 department never made a mistake with respect to 13 anything that it did? 14 MR. MORRIS: Objection to the form of the 15 question. 16 THE WITNESS: No, I did not say that. 17 Q. (BY MR. RUKAVINA) Do you recall any mistakes 18 in your time at the corporate accounting group at 19 Highland that had been made, any significant mistakes? 20 MR. MORRIS: Objection to the form of the 21 question. 22 THE WITNESS: Significant mistakes, not that 23 I can recall. 24 Q. (BY MR. RUKAVINA) No accounts payable 25 mistakenly paid?</p>
<p style="text-align: right;">50</p> <p>1 after his e-signature was used either on these notes or 2 other documents in May of 2019, would you have brought 3 the documents back to him for any kind of verification? 4 MR. MORRIS: Objection to the form of the 5 question. 6 THE WITNESS: Probably not. These are all 7 very standard. We've papered hundreds of loans. So I 8 think he trusted that we can handle updating a date and 9 a dollar amount on these loan templates. 10 Q. (BY MR. RUKAVINA) Do you know or believe, or 11 your recent review of documents, did it reveal an email 12 from Mr. Waterhouse to you specifically authorizing his 13 e-signature on Exhibits 4 and/or 5? 14 A. Not that I recall seeing, no. 15 Q. Sitting here today, do you have any memory of 16 Mr. Waterhouse orally or otherwise specifically 17 authorizing you to affix his e-signature to Exhibits 4 18 and/or 5? 19 A. Specifically on these loans, no, I don't 20 recall those conversations. But, again, our practice 21 has always been we have this discussion, he's under the 22 understanding that we're going to paper the loans, he's 23 always comfortable with using his e-signature. 24 This is not something me or my team would 25 have done without that authority and approval from him.</p>	<p style="text-align: right;">52</p> <p>1 MR. MORRIS: Objection to the form of the 2 question. 3 THE WITNESS: I cannot specifically answer 4 that question with 17 years of work to recall, sorry. 5 MR. RUKAVINA: Just take a quick break. If 6 you need a restroom -- off the record. 7 (Off the record.) 8 Q. (BY MR. RUKAVINA) Going back to Exhibits 4 9 and 5. 10 Mr. Waterhouse signed these promissory notes. 11 Is there any particular reason why he signed them as 12 opposed to Dondero or someone else? 13 A. No particular reason. He's an officer for 14 both companies. He's a signatory. 15 Q. Who decided, if anyone, to your knowledge, 16 that he would be the one signing the notes, these two 17 notes? 18 A. I don't know who would have decided that, but 19 typically if Frank specifically wanted Jim Dondero to 20 sign it, he would say, take it to Jim to sign. 21 Q. Do you have a recollection of 22 Mr. Dondero -- strike that. 23 Do you have a recollection of Mr. Waterhouse 24 signing other promissory notes? 25 A. Yes. I know for sure he has signed other</p>

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<p style="text-align: right;">53</p> <p>1 promissory notes. I can't tell you explicitly which 2 ones. 3 (Off the record.) 4 Q. (BY MR. RUKAVINA) Are you saying that in May 5 of 2019 -- strike that. 6 By May of 2019, was it not the standard 7 practice at the debtor that Mr. Dondero would sign 8 intercompany promissory notes? 9 MR. MORRIS: Objection to the form of the 10 question. 11 THE WITNESS: No, that's not standard 12 practice. Just needed to be somebody -- somebody who 13 is a signer for the entity on the incumbency 14 certificate. 15 Q. (BY MR. RUKAVINA) Was there a standard 16 practice, or did you just describe the standard 17 practice that it was someone on the incumbency 18 certificate? 19 A. That's correct, somebody on the incumbency 20 certificate. Frank is a great prospect to sign, with 21 giving direction to set loans up, send money out. Why 22 wouldn't he sign it. 23 Q. Do you have any memory sitting here today of 24 Mr. Waterhouse telling you or agreeing that he would be 25 signing these two promissory notes for HCMFA?</p>	<p style="text-align: right;">55</p> <p>1 Q. Well, let's go back a little bit in time. 2 Would you agree that at some point prior to 3 2019 the standard course was that paper notes were ink 4 signed? 5 MR. MORRIS: Objection to the form of the 6 question. 7 THE WITNESS: I could not tell you 8 specifically when notes were or were not ink signed. 9 Q. (BY MR. RUKAVINA) Was there any repository, 10 to the best of your recollection, as of May 2019 where 11 any ink-signed original promissory notes were kept by 12 the debtor? 13 A. No. We always would scan them in, save them 14 on our shared drive. Never had paper copies. 15 Q. So that's -- fixing to ask that question 16 next. 17 So Exhibits 4 and 5, would they even have 18 been printed after they were papered up? 19 MR. MORRIS: Objection to the form of the 20 question. 21 THE WITNESS: Possibly. Somebody could have 22 printed them. 23 Q. (BY MR. RUKAVINA) Do you remember printing 24 Exhibits 4 or 5 sitting here today? 25 A. I don't recall printing them myself, no.</p>
<p style="text-align: right;">54</p> <p>1 A. Not specifically, but he didn't need to tell 2 me. He typically would tell me if he wanted Jim to 3 sign them. 4 Q. Sitting here today, do you have any memory of 5 giving Mr. Waterhouse these two promissory notes after 6 they were prepared? 7 A. I specifically don't remember walking into 8 his office and providing it to him, but he could have 9 found it on our shared drive if he wanted to. 10 Q. Do you have any memory or in your recent 11 review of documents did you see any email to the effect 12 of you sending either or both of these promissory notes 13 to Mr. Waterhouse after they were papered up? 14 A. I don't have any specific recollection, 15 again, but he had access to look at them. 16 Q. On the shared drive? 17 A. Yes. 18 Q. In May -- I'm going to ask this question 19 multiple different ways, so let's start with kind of 20 the general. 21 In May or by May of 2019, was there a 22 repository, electronic or paper, where the debtor kept 23 original promissory notes that were owed -- where money 24 was owed to it? 25 A. Original meaning paper?</p>	<p style="text-align: right;">56</p> <p>1 Q. Would there have been a reason to print them 2 out if, as you said, the notes were stored 3 electronically? 4 MR. MORRIS: Objection to the form of the 5 question. 6 THE WITNESS: There could be a reason. I 7 don't recall that I for any reason printed these 8 particular notes. 9 Q. (BY MR. RUKAVINA) So as of May 2019, is it 10 your testimony that notes that were papered up by the 11 corporate accounting group would have been saved 12 electronically on the system and not kept by way of 13 paper copies in some file? 14 A. Correct. That's right. 15 Q. This is additional metadata. And you 16 understand I have a bit of an accent. 17 What are we on? 18 (Off the record.) 19 Q. (BY MR. RUKAVINA) Ms. Hendrix, Exhibit 8 is 20 going to be additional metadata for the May 3, 2019, 21 note that we've been looking at, and Exhibit 9 will be 22 the same thing for the May 2 note that we've been 23 looking at. 24 That's 8. That's 9. 25 (Whereupon, Exhibits 8 & 9 were marked for</p>

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<p style="text-align: right;">57</p> <p>1 identification.)</p> <p>2 Q. (BY MR. RUKAVINA) Ms. Hendrix, I'm going to</p> <p>3 represent to you again that my office has faithfully</p> <p>4 printed this metadata out without doctoring or changing</p> <p>5 anything, and I ask you to assume that. If I'm wrong</p> <p>6 on that, then your answers don't count.</p> <p>7 Ma'am, as I look at these two documents, it</p> <p>8 says last modified by Kristin Hendrix.</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. And that would have -- that could have only</p> <p>12 been you; correct, in that department?</p> <p>13 A. I hope so, yes.</p> <p>14 Q. Seeing these two documents, can you agree</p> <p>15 with me now that it was in fact you that papered up</p> <p>16 Exhibits 4 and 5?</p> <p>17 MR. MORRIS: Objection. Asked and answered.</p> <p>18 THE WITNESS: I would assume so since my name</p> <p>19 is on it, yes.</p> <p>20 Q. (BY MR. RUKAVINA) Both of these documents</p> <p>21 say last printed -- I'm sorry. If you see related</p> <p>22 dates, it says last printed May 2, 2019, 11:27 A.M. Do</p> <p>23 you have any memory or any understanding as to why that</p> <p>24 date would be there or what last printed might mean?</p> <p>25 A. I don't know why it says last printed the day</p>	<p style="text-align: right;">59</p> <p>1 Obviously, you're welcome to use them anytime you need</p> <p>2 to, but I think we're done with those notes.</p> <p>3 Going to hand you what we're going to mark as</p> <p>4 Exhibit 10, which is an email chain produced by the</p> <p>5 debtor.</p> <p>6 And I don't know how anyone on the video will</p> <p>7 see it. I apologize. I'll have to send it to you</p> <p>8 later.</p> <p>9 (Whereupon, Exhibit 10 was marked for</p> <p>10 identification.)</p> <p>11 Q. (BY MR. RUKAVINA) Now, if you start with</p> <p>12 this email chain, it starts on November 19, 2020 from</p> <p>13 Jack Donohue to you, copying Mr. Seery and various</p> <p>14 others.</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. And Mr. Donohue is asking you to provide him</p> <p>18 the financial records of HCMFA due to the funds owed</p> <p>19 the debtor.</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Do you recall that email from Mr. Donohue to</p> <p>23 you?</p> <p>24 A. Yes.</p> <p>25 Q. Do you recall any context or subsequent</p>
<p style="text-align: right;">58</p> <p>1 before it was created. That doesn't make any sense. I</p> <p>2 have no idea.</p> <p>3 Unless, the only thing I could think of is if</p> <p>4 we changed this template. When I say "this," the</p> <p>5 \$2.4 million loan, which was papered on the 2nd, and</p> <p>6 then used it for the next day for the template to</p> <p>7 update the date, possibly. I have no idea.</p> <p>8 Q. Well, it may be -- and I understand that you</p> <p>9 don't have any memory; we're speculating a little bit.</p> <p>10 It may be, looking at Exhibits 8 and 9, that</p> <p>11 the \$2.4 million note was printed on May 2, and then</p> <p>12 after having been used as the template for the</p> <p>13 \$5 million note, the \$5 million note would not have</p> <p>14 been printed.</p> <p>15 Does that sound possible?</p> <p>16 MR. MORRIS: Objection to the form of the</p> <p>17 question.</p> <p>18 THE WITNESS: Sure, it could be possible.</p> <p>19 Q. (BY MR. RUKAVINA) But you don't have any</p> <p>20 memory either way?</p> <p>21 A. No. And when these were printed they're</p> <p>22 printed to PDF, I believe, is probably what that means.</p> <p>23 Q. Okay.</p> <p>24 We're going to switch gears a little bit now,</p> <p>25 if you have to make a pile of those exhibits.</p>	<p style="text-align: right;">60</p> <p>1 discussions or how that email came to be, or do you</p> <p>2 just recall getting that email?</p> <p>3 A. I just recall getting the email.</p> <p>4 Q. You write back, hi Jack, Scott Ellington is</p> <p>5 going to follow up with the board on this request.</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Do you recall why you told Jack that</p> <p>9 Mr. Ellington was going to follow up?</p> <p>10 A. From what I recall, I had asked Frank</p> <p>11 Waterhouse if it was okay to send these financials</p> <p>12 over, and he wanted me to check with Scott Ellington</p> <p>13 and that was Scott's response.</p> <p>14 Q. And did he tell you why he wanted you to</p> <p>15 check with Scott Ellington?</p> <p>16 A. Just to make sure that there were no issues</p> <p>17 with sending them over.</p> <p>18 Q. Mr. Seery writes back, can I get this ASAP.</p> <p>19 HCMFA is way overdue.</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. And Mr. Seery writes again, it's about a week</p> <p>23 later, and he says, this is an explicit direction from</p> <p>24 me as CEO of HCMLP. But it looks like you are the</p> <p>25 recipient of that December 2 email; correct?</p>

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<p style="text-align: right;">61</p> <p>1 A. Yes.</p> <p>2 Q. Do you remember him sending you that email</p> <p>3 and copying those people?</p> <p>4 A. Yes.</p> <p>5 Q. Do you remember anything happening in that</p> <p>6 week between his November 25 and December 2 email along</p> <p>7 the same discussion lines?</p> <p>8 A. I don't remember anything. I think I was</p> <p>9 probably left out of any discussions, and if there were</p> <p>10 any, it was with Scott Ellington and whomever he had</p> <p>11 discussions with.</p> <p>12 Q. Then subsequent, on December 2, Mr. Seery</p> <p>13 writes, all, Scott and I have spoken and agree that the</p> <p>14 information should be provided to James immediately.</p> <p>15 Would that have been James Romey, do you</p> <p>16 think?</p> <p>17 A. Yes.</p> <p>18 Q. And who was James Romey?</p> <p>19 A. He also worked for DSI.</p> <p>20 Q. And then he writes, Kristin, please proceed</p> <p>21 with James. If anyone has any questions or issues,</p> <p>22 please call me.</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Did you proceed with James Romey?</p>	<p style="text-align: right;">63</p> <p>1 you, copying Waterhouse, Seery, a bunch of others.</p> <p>2 Where he says, at the direction of Jim Seery,</p> <p>3 please provide DSI with the requested information for</p> <p>4 each entity below.</p> <p>5 And you'll see the entity includes both of my</p> <p>6 clients, NexPoint Advisors and HCMFA. And the</p> <p>7 information includes bank statements, income</p> <p>8 statements, balance sheets, cash flows.</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Do you recall this email?</p> <p>12 A. Vaguely, yes.</p> <p>13 Q. Did you have any concerns when you received</p> <p>14 this email?</p> <p>15 A. Concerns about the email, no. I probably</p> <p>16 checked with -- I would have checked with Frank to make</p> <p>17 sure it was okay to send this first.</p> <p>18 Q. Frank Waterhouse?</p> <p>19 A. Yes.</p> <p>20 Q. Do you have any understanding as to why</p> <p>21 Mr. Donohue requested bank statements, income</p> <p>22 statements, balance sheets for NexPoint and/or HCMFA?</p> <p>23 A. I do not.</p> <p>24 Q. Did he or anyone at DSI tell you why they</p> <p>25 were requesting that?</p>
<p style="text-align: right;">62</p> <p>1 A. I further made sure that Scott was okay, to</p> <p>2 confirm. He said yes, please do, and I did send them</p> <p>3 to James Romey.</p> <p>4 Q. So Mr. Seery has some of it in this email</p> <p>5 chain, but do you have any understanding as to why</p> <p>6 either DSI or Mr. Seery in November of 2020 was asking</p> <p>7 for the financial records of HCMFA?</p> <p>8 A. I do not, other than what's in this email.</p> <p>9 Q. Did you discuss with either DSI or Mr. Seery</p> <p>10 or Mr. Waterhouse in November or December 2020 whether</p> <p>11 the demand notes from HCMFA should be demanded, should</p> <p>12 be called?</p> <p>13 A. I did not have discussions.</p> <p>14 Q. Next exhibit is Exhibit 11. This is another</p> <p>15 email chain.</p> <p>16 And I apologize to the folks on the video.</p> <p>17 I'll have to get it to you during some break.</p> <p>18 MR. MORRIS: Hold on one second.</p> <p>19 MR. RUKAVINA: Sure. Off the record.</p> <p>20 (Off the record.)</p> <p>21 (Whereupon, Exhibit 11 was marked for</p> <p>22 identification.)</p> <p>23 Q. (BY MR. RUKAVINA) Exhibit 11, Ms. Hendrix,</p> <p>24 if you'll go to the beginning of this email chain, is</p> <p>25 an email on January 6, 2021, again from Mr. Donohue to</p>	<p style="text-align: right;">64</p> <p>1 A. Not that I can recall.</p> <p>2 Q. If we go forward in time, you'll see that</p> <p>3 Mr. Waterhouse is writing back to Mr. Donohue. And</p> <p>4 then Mr. Seery interjects and says, these are HCMLP</p> <p>5 business records. Please provide them as requested by</p> <p>6 Jack ASAP.</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. And it looks like you were not privy to</p> <p>10 subsequent communications where Frank and Jim were</p> <p>11 talking back and forth about this. You were not privy</p> <p>12 to those, like you weren't blind copied or anything to</p> <p>13 your recollection?</p> <p>14 A. No.</p> <p>15 Q. Did you in fact on or after January 6, 2021,</p> <p>16 provide Mr. Donohue or anyone on his team the</p> <p>17 information that he had requested as it relates to</p> <p>18 NexPoint and/or HCMFA?</p> <p>19 A. Without going back to check, I couldn't</p> <p>20 answer yes or no for certain.</p> <p>21 Q. So I think you mentioned when you received</p> <p>22 the email from Mr. Donohue you would have checked with</p> <p>23 Frank. And what do you remember asking Frank or</p> <p>24 checking with him about?</p> <p>25 A. I don't remember asking him specifically. In</p>

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<p style="text-align: right;">65</p> <p>1 fact, it's possible that Frank just responded on his 2 own here to Jack. Again, would have been a 3 conversation that I can't specifically recall. 4 Q. Sure. And you don't specifically remember 5 today providing Mr. Donohue any of that information; 6 right? 7 A. Right. 8 Q. You don't specifically remember today having 9 a discussion with Mr. Donohue or Seery or anyone else 10 at or about that time as to why they were wanting this 11 information? 12 A. Correct. 13 Q. Exhibit 12, Ms. Hendrix, is going to be the 14 December 3, 2020, letter by which Highland called the 15 notes. 16 MR. MORRIS: Objection to the form of the 17 question if there was one. 18 (Whereupon, Exhibit 12 was marked for 19 identification.) 20 Q. (BY MR. RUKAVINA) Are you familiar with 21 Exhibit 12, Ms. Hendrix? 22 A. No, I haven't seen this. 23 Q. Prior to today, you don't remember seeing 24 this? 25 A. No.</p>	<p style="text-align: right;">67</p> <p>1 to? 2 A. We had a standing weekly cash meeting with 3 Frank Waterhouse, myself, Jim Seery. I can't recall 4 everyone on it. Some of the DSI folks. We go through 5 cash forecasts. It's a 13-week cash forecast. We go 6 through it every week. 7 It's going to lay out incoming and outgoing 8 payments that are forecasted, of which these term loans 9 were in those forecasts, so they were discussed. 10 Q. And Mr. Morris produced some of those to me 11 this morning. I haven't had time to go through them. 12 But it is your recollection in November and 13 December of 2020 the fact of the NexPoint term note 14 being out there was known to Mr. Seery? 15 A. Yes. 16 Q. And the fact of an upcoming December 31, 17 2020, payment was known to Mr. Seery? 18 A. Yes. 19 Q. So with that background, in November and 20 December of 2020, do you remember discussing with 21 anyone anything to the effect of, oh, it really would 22 be better if NexPoint defaulted on that note so we 23 could call it? 24 A. No. 25 Q. Did Mr. Seery ever state to you anything in</p>
<p style="text-align: right;">66</p> <p>1 Q. I think you're answering no? 2 A. No, sorry, no. 3 Q. On or before December 3, 2020, did anyone 4 discuss with you whether Highland should call the 5 demand notes that were outstanding by HCMFA? 6 A. No. 7 Q. Do you recall in December 2020 any discussion 8 with anyone at the debtor about the NexPoint 9 \$30.7 million term note? 10 A. Repeat your question again, please. 11 Q. Sure. So you're familiar, and we'll talk 12 about it in some detail, with the NexPoint 13 \$30.7 million note? 14 A. Yes. 15 Q. And again, we'll talk about it, but at that 16 point in time that was a term note; correct? 17 A. Correct. 18 Q. Do you remember in the December 2020 or 19 November 2020 time frame discussing with anyone at the 20 debtor the status of that NexPoint note? 21 A. Yes, we would have discussed this on a weekly 22 basis in our cash meetings that we would have had, as 23 identifying that there are payments due on these loans 24 in December. 25 Q. What weekly cash meetings are you referring</p>	<p style="text-align: right;">68</p> <p>1 November or December of 2020 about how the debtor might 2 monetize that NexPoint note? 3 A. No. 4 Q. Did he discuss with you any potential sale of 5 that promissory note? 6 A. No. 7 Q. Did DSI ever discuss with you in November or 8 December 2020 any potential sale of that note? 9 A. No. 10 Q. Or how to monetize that note? 11 A. No. 12 Q. So -- well, strike that. 13 Did Mr. Seery or anyone at DSI, or anyone at 14 all, in November or December of 2020 state any words to 15 you to the effect that they were hoping that NexPoint 16 would default on that note? 17 A. Never. 18 Q. Or that it would be in the debtor's interest 19 for NexPoint to default on that note? 20 A. No. 21 Q. In November or December of 2020, do you 22 recall having any discussions with Mr. Seery or anyone 23 at DSI as to the collectibility of that note? And by 24 that I mean whether NexPoint can pay the note? 25 A. I don't specifically recall. It most likely</p>

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<p style="text-align: right;">69</p> <p>1 came up in cash conversations.</p> <p>2 Q. I think you were assistant controller back</p> <p>3 then?</p> <p>4 A. Yes.</p> <p>5 Q. Would a discussion of a borrower's ability to</p> <p>6 repay have been something within your general sphere of</p> <p>7 responsibility in that time frame?</p> <p>8 MR. MORRIS: Objection to the form of the</p> <p>9 question.</p> <p>10 THE WITNESS: It depends on who the borrower</p> <p>11 is, and at that time we did -- we had knowledge over</p> <p>12 that information, so yes.</p> <p>13 Q. (BY MR. RUKAVINA) Well, you've seen some</p> <p>14 instructions or requests from Mr. Seery to you and DSI</p> <p>15 to you for financial information of NexPoint and HCMFA.</p> <p>16 We've gone through those documents; right?</p> <p>17 A. Yes.</p> <p>18 Q. Does that refresh your memory that there was</p> <p>19 any internal discussion that you were privy to about</p> <p>20 the ability of HCMFA and/or NexPoint to pay these</p> <p>21 notes?</p> <p>22 A. I don't recall that specifically being asked.</p> <p>23 It could have.</p> <p>24 Q. Did you ever at any point in time have any</p> <p>25 employment or officer or any title or role with</p>	<p style="text-align: right;">71</p> <p>1 not?</p> <p>2 A. Yes.</p> <p>3 Q. What's your understanding?</p> <p>4 A. Either November 30 or December 1, 2020, I</p> <p>5 received a phone call from Frank Waterhouse that said,</p> <p>6 no payments are going from any of the Advisors to</p> <p>7 Highland.</p> <p>8 Q. Can you be more specific with what he said?</p> <p>9 A. That's what he said.</p> <p>10 Q. So he said no payments from the Advisors to</p> <p>11 Highland?</p> <p>12 A. Yes.</p> <p>13 Q. Did he reference the promissory note</p> <p>14 expressly?</p> <p>15 A. No.</p> <p>16 Q. But no payments means?</p> <p>17 A. Nothing.</p> <p>18 Q. That would logically in your mind include the</p> <p>19 promissory note?</p> <p>20 A. Yes.</p> <p>21 Q. Did you ask him why?</p> <p>22 A. No.</p> <p>23 Q. Did he tell you why?</p> <p>24 A. No.</p> <p>25 Q. Did you, prior to January 1, 2021, did you</p>
<p style="text-align: right;">70</p> <p>1 NexPoint Advisors, LP?</p> <p>2 A. No.</p> <p>3 Q. Were you ever the controller or assistant</p> <p>4 controller for NexPoint Advisors LP?</p> <p>5 A. No.</p> <p>6 Q. Did you ever at any point in time have any</p> <p>7 employment, officer or any title or role at HCMFA?</p> <p>8 A. No.</p> <p>9 Q. Were you ever the controller or assistant</p> <p>10 controller of HCMFA?</p> <p>11 A. No.</p> <p>12 Q. So you might have indirectly provided</p> <p>13 services to those two as part of shared services, but</p> <p>14 never directly; is that fair?</p> <p>15 MR. MORRIS: Objection to the form of the</p> <p>16 question.</p> <p>17 THE WITNESS: When you say never directly,</p> <p>18 meaning I was not employed by those entities?</p> <p>19 Q. (BY MR. RUKAVINA) Correct.</p> <p>20 A. That's correct.</p> <p>21 Q. Do you have any understanding -- first of</p> <p>22 all, NexPoint did not make a payment on December 31,</p> <p>23 2020; correct?</p> <p>24 A. Correct.</p> <p>25 Q. Okay. Do you have any understanding of why</p>	<p style="text-align: right;">72</p> <p>1 hear from anyone as to why Mr. Waterhouse gave that</p> <p>2 instruction?</p> <p>3 A. Not that I recall.</p> <p>4 Q. Did you, after that November 30 or December 1</p> <p>5 phone call, did you follow up with him or anyone else</p> <p>6 about the upcoming note payment?</p> <p>7 A. I didn't have any reason to.</p> <p>8 Q. I'm going to -- let me find you a document</p> <p>9 for a moment.</p> <p>10 Just so the record is complete, let's include</p> <p>11 this promissory note. It's going to be Exhibit 13.</p> <p>12 This is the NexPoint promissory note.</p> <p>13 (Whereupon, Exhibit 13 was marked for</p> <p>14 identification.)</p> <p>15 Q. (BY MR. RUKAVINA) I take it you've seen this</p> <p>16 promissory note, Exhibit 13?</p> <p>17 A. Yes.</p> <p>18 Q. And I think you testified about this before,</p> <p>19 but just to summarize to save time.</p> <p>20 This would have been a note that you would</p> <p>21 not have papered but would have gone through legal</p> <p>22 because it was a roll-up. Is that generally accurate?</p> <p>23 A. Yes.</p> <p>24 Q. And do you have any memory at all of having</p> <p>25 anything to do with papering up this loan?</p>

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<p style="text-align: right;">73</p> <p>1 A. Not that I recall.</p> <p>2 Q. Would you have had, after 2017 and before</p> <p>3 2021, any role with respect to any payments or upcoming</p> <p>4 payments on this note, any role at all?</p> <p>5 A. Yes.</p> <p>6 Q. What would have been your role or roles?</p> <p>7 A. That would have been taking direction from</p> <p>8 Frank Waterhouse or possibly Jim Dondero saying, go</p> <p>9 ahead and make these payments that are due on these</p> <p>10 term notes.</p> <p>11 Q. Would you have recorded on any books or</p> <p>12 records payments that actually were made?</p> <p>13 A. Not me personally.</p> <p>14 Q. Who would have?</p> <p>15 A. Our accountant, which could have been one of</p> <p>16 two different people, depending on the time frame.</p> <p>17 Q. Would you have had any role with respect to</p> <p>18 recording those payments or is that just something that</p> <p>19 your group would have done?</p> <p>20 MR. MORRIS: Objection to the form of the</p> <p>21 question.</p> <p>22 THE WITNESS: I would not have had a role.</p> <p>23 My group would have.</p> <p>24 Q. (BY MR. RUKAVINA) What about calculating</p> <p>25 amortization and/or interest payments that are due or</p>	<p style="text-align: right;">75</p> <p>1 A. At my house.</p> <p>2 Q. Did you answer on a cell phone or landline?</p> <p>3 A. My cell phone.</p> <p>4 Q. Is there any chance in hell that your cell</p> <p>5 phone would still have a record of that phone call,</p> <p>6 like what time it was and how long it lasted?</p> <p>7 MR. MORRIS: Objection to the form of the</p> <p>8 question.</p> <p>9 Q. (BY MR. RUKAVINA) I apologize for using</p> <p>10 hell.</p> <p>11 MR. MORRIS: And to foundation.</p> <p>12 THE WITNESS: I have no idea.</p> <p>13 Q. (BY MR. RUKAVINA) Do you have your cell</p> <p>14 phone with you right now?</p> <p>15 A. In the other room.</p> <p>16 Q. I might ask you during the break to just --</p> <p>17 we'll take a short break before I'm done, and I'll ask</p> <p>18 you if you've had a chance to look for November and</p> <p>19 December 2020 phone logs between you and</p> <p>20 Mr. Waterhouse. I would ask you to do that, please.</p> <p>21 A. Sure.</p> <p>22 Q. And I apologize, I think you said you thought</p> <p>23 it was a short telephone call?</p> <p>24 A. I have no idea.</p> <p>25 Q. Did the telephone call or Mr. Waterhouse's</p>
<p style="text-align: right;">74</p> <p>1 upcoming? Who would have done that, you or someone</p> <p>2 else?</p> <p>3 A. Our accountant.</p> <p>4 Q. Do you have any memory of doing that?</p> <p>5 MR. MORRIS: Objection to the form of the</p> <p>6 question.</p> <p>7 THE WITNESS: Not during 2017 through 2019.</p> <p>8 Q. (BY MR. RUKAVINA) What about 2020?</p> <p>9 A. No.</p> <p>10 Q. Going back to that November 30 or December 1</p> <p>11 telephone call, do you recall who initiated the call?</p> <p>12 A. To me?</p> <p>13 Q. The one between you and Mr. Waterhouse.</p> <p>14 A. Frank called me.</p> <p>15 Q. Frank called you.</p> <p>16 And was it just to discuss -- or just to give</p> <p>17 you that instruction, no payments from the Advisors, or</p> <p>18 was there other things discussed?</p> <p>19 A. I could not tell you if something else was</p> <p>20 discussed on that phone call.</p> <p>21 Q. Do you remember if it was a long phone call</p> <p>22 or short?</p> <p>23 A. Couldn't tell you.</p> <p>24 Q. Do you remember where you were when he called</p> <p>25 you?</p>	<p style="text-align: right;">76</p> <p>1 instructions surprise you in any way?</p> <p>2 A. Nothing surprises me anymore, so no.</p> <p>3 Q. Did it surprise you back in November or</p> <p>4 December of 2020?</p> <p>5 A. No.</p> <p>6 Q. Did it pique your curiosity?</p> <p>7 A. Nope.</p> <p>8 Q. Just another instruction from your boss?</p> <p>9 A. Yep.</p> <p>10 Q. Exhibit 14 is going to be a document that</p> <p>11 we're not sure what it is and we're not sure who</p> <p>12 prepared it. It appears to be a ledger of charges</p> <p>13 against and payments on this promissory note.</p> <p>14 I'm just saying that so the people on the</p> <p>15 phone know what it is, but you don't have to take what</p> <p>16 I said as correct.</p> <p>17 (Whereupon, Exhibit 14 was marked for</p> <p>18 identification.)</p> <p>19 Q. (BY MR. RUKAVINA) So Ms. Hendrix, Exhibit 14</p> <p>20 was produced by the debtor. And I'm going to ask you,</p> <p>21 do you know what this is or have you seen it before?</p> <p>22 Can you help us state what it is?</p> <p>23 A. This looks like it is an amortization</p> <p>24 schedule of the NexPoint Advisors term loan.</p> <p>25 Q. Would this have been something that it</p>

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<p style="text-align: right;">77</p> <p>1 appears to you would have been maintained internally by</p> <p>2 the debtor, or does it look like it might have been</p> <p>3 prepared by DSI or someone else for some other reason?</p> <p>4 A. It looks like the debtor's amortization</p> <p>5 schedule that they kept.</p> <p>6 Q. Did the debtor keep an amortization schedule</p> <p>7 for the NexPoint promissory note, to your knowledge?</p> <p>8 A. Yes.</p> <p>9 Q. Did the debtor keep amortization schedules</p> <p>10 for other term promissory notes?</p> <p>11 A. Yes.</p> <p>12 Q. In what format, like Excel spreadsheets or</p> <p>13 Word documents? What is your recollection for NexPoint</p> <p>14 specifically?</p> <p>15 A. Excel.</p> <p>16 Q. Would that have been on the shared system or</p> <p>17 something?</p> <p>18 A. Yes.</p> <p>19 Q. And who would have been responsible on an</p> <p>20 ongoing basis to update the NexPoint amortization</p> <p>21 schedule?</p> <p>22 MR. MORRIS: Objection to the form of the</p> <p>23 question.</p> <p>24 THE WITNESS: Depends on what time you're</p> <p>25 asking.</p>	<p style="text-align: right;">79</p> <p>1 change but it doesn't use brackets?</p> <p>2 A. It's a negative number. It's just a</p> <p>3 formatting issue.</p> <p>4 Q. What about also on that same page in the</p> <p>5 other column, principal paid, 5/31/2020, it's a</p> <p>6 positive number, 575,550.</p> <p>7 MR. MORRIS: Where are you?</p> <p>8 MR. RUKAVINA: On page 2 of this exhibit.</p> <p>9 MR. MORRIS: What date?</p> <p>10 MR. RUKAVINA: May 31, 2020. And it's the</p> <p>11 column over, principal paid. It's a positive number,</p> <p>12 575,000 and change.</p> <p>13 MR. MORRIS: Got it, thank you.</p> <p>14 Q. (BY MR. RUKAVINA) Do you see that,</p> <p>15 Ms. Hendrix?</p> <p>16 A. Yes.</p> <p>17 Q. Do you have an understanding of why that</p> <p>18 number would be positive?</p> <p>19 A. Actually, I think this looks like an entry to</p> <p>20 me where the interest is what we call picking. So on</p> <p>21 the anniversary date of this loan, which is May, from</p> <p>22 what I can tell, the accrued interest total, which is</p> <p>23 that 575-, is being rolled into principal.</p> <p>24 That's what I can tell from looking at it.</p> <p>25 Q. Okay. Do you have any understanding as to</p>
<p style="text-align: right;">78</p> <p>1 Q. (BY MR. RUKAVINA) Let's talk about the year</p> <p>2 of 2020.</p> <p>3 A. That would have been Hayley Eliason, our</p> <p>4 accountant at that time.</p> <p>5 Q. What about the year 2019?</p> <p>6 A. Still Hayley.</p> <p>7 MR. RUKAVINA: I'm going to just ask, to</p> <p>8 preserve the record, Mr. Morris, if he hasn't already,</p> <p>9 to produce any such Excel spreadsheet in the native</p> <p>10 form.</p> <p>11 Q. (BY MR. RUKAVINA) If we look at this,</p> <p>12 Ms. Hendrix -- and I'm a little confused as to what</p> <p>13 these entries mean. Maybe you could help me. But</p> <p>14 columns that say interest paid, principal paid, total</p> <p>15 paid, do you know what those columns mean?</p> <p>16 A. Exactly as they state. These are interest</p> <p>17 and principal payments made on the date that's listed,</p> <p>18 and then you've got a total.</p> <p>19 Q. And then they're in brackets because they're</p> <p>20 negative numbers?</p> <p>21 A. Correct.</p> <p>22 Q. So here's what I'm not understanding. Go to</p> <p>23 the second page.</p> <p>24 You see there's an entry under interest paid</p> <p>25 12/30/29 [verbatim] that says negative 530,000 and</p>	<p style="text-align: right;">80</p> <p>1 why that would have been done or why that would have</p> <p>2 been done on that day?</p> <p>3 MR. MORRIS: Objection to the form of the</p> <p>4 question.</p> <p>5 THE WITNESS: Because that's the anniversary</p> <p>6 date of the loan. I would assume that that's how the</p> <p>7 loan is written.</p> <p>8 Q. (BY MR. RUKAVINA) And I think that that</p> <p>9 Section 1 of the promissory note does say, the unpaid</p> <p>10 principal balance of this note from time to time</p> <p>11 outstanding shall bear interest.</p> <p>12 At the rate of 6 percent per annum from the</p> <p>13 date hereof until maturity date, compounded annually on</p> <p>14 the anniversary of the date of this note.</p> <p>15 Do you see that?</p> <p>16 MR. MORRIS: Objection to the form of the</p> <p>17 question.</p> <p>18 THE WITNESS: Yeah, I see that.</p> <p>19 Q. (BY MR. RUKAVINA) Assuming that this is the</p> <p>20 correct amortization schedule for the NexPoint note,</p> <p>21 and that the numbers in here are correct, if you look</p> <p>22 at the second page under the column total paid there</p> <p>23 are a number of entries for 2019.</p> <p>24 Do you see that, the far right column?</p> <p>25 A. At the top, yes.</p>

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<p style="text-align: right;">81</p> <p>1 Q. For example, 1.3 million, 2.1 million, 2 1.3 million. 3 Do you see that? 4 A. Yes. 5 Q. Assuming that that's correct, do you have any 6 memory or understanding whether in the year 2019, or 7 why NexPoint was making these payments on this 8 promissory note? 9 A. Without going back and reading through emails 10 I can only assume that, from looking at this, Highland, 11 the debtor, would have needed cash, and so this is one 12 way of getting cash to the debtor. 13 Q. This is kind of like what we discussed in the 14 beginning, that Mr. Dondero on a cash needed basis 15 would just transfer money between entities? 16 A. Yes. 17 Q. Do you have any memory in the first half of 18 2019 whether Highland, the debtor, had any particular 19 need for cash money at that time? 20 A. We generally always had a need for cash, so 21 yes. 22 Q. And so if NexPoint was transferring money 23 back to Highland on this note because Highland needed 24 the money, would those have been recorded as 25 prepayments by the debtor?</p>	<p style="text-align: right;">83</p> <p>1 Exhibit 15 and I'm going to represent to you that it's 2 the email that Mr. Morris sent to me today and I've not 3 doctored it in any way. 4 (Whereupon, Exhibit 15 was marked for 5 identification.) 6 MR. MORRIS: Do you have the email that it 7 was attached to? 8 MR. RUKAVINA: Somewhere. I can find it at a 9 break. 10 MR. MORRIS: I'll let the witness testify. 11 This was attached to an email. Not my email, but 12 another email. But I'll let the witness testify. 13 MR. RUKAVINA: Off the record. 14 (Off the record.) 15 Q. (BY MR. RUKAVINA) So you have Exhibit 15. 16 And during the break we established, I don't 17 have a copy of it right now, but you sent Exhibit 15 on 18 August 29, 2020, to Mr. Dondero by email, copying 19 Mr. Waterhouse, as well as a couple of other 20 attachments; is that correct? 21 A. Correct. 22 Q. Do you recall what prompted you to send that 23 email and this attachment? 24 A. Yes. 25 Q. What?</p>
<p style="text-align: right;">82</p> <p>1 MR. MORRIS: Objection to the form of the 2 question. 3 THE WITNESS: Yes. 4 Q. (BY MR. RUKAVINA) Sitting here today, do you 5 have any reason to believe based on the formatting or 6 anything on Exhibit 14 that it's not the amortization 7 schedule as it was maintained by the debtor? 8 A. I don't have any reason to not believe that 9 it was. 10 Q. Going to show you a few documents that I'm 11 hopefully going to burn through, but you're certainly 12 entitled to take all the time that you need. 13 So first is going to be a document that 14 Mr. Morris produced this morning. It's not Bates 15 labeled. I don't know why. 16 MR. MORRIS: As I said in my email, my 17 paralegal is sick and so I wanted you to have the 18 documents. We'll Bates stamp them later, but we have a 19 written record from my email of what we produced to 20 you. 21 MR. RUKAVINA: You're assuming that I read my 22 emails. 23 MR. MORRIS: Sorry about that. I confess, 24 sometimes I don't as well. 25 Q. (BY MR. RUKAVINA) So I'm going to hand you</p>	<p style="text-align: right;">84</p> <p>1 A. Frank Waterhouse called me on August 29, and 2 requested that I do so. 3 Q. Did he tell you why? 4 A. From what I recall, this was a time when Jim 5 was trying to come up with his bargain or pop land, 6 whatever he referenced it as. This was all information 7 that Frank said he wanted. 8 Q. Okay. So going back to Exhibit 15, what I'm 9 interested in is NexPoint Advisors, the 23,846,000 and 10 change number. 11 Do you see that? 12 A. Yes. 13 Q. Where did that number -- or where did this 14 Exhibit 15 come from, if you understand my question? 15 A. Sure. These numbers should all be balances 16 off of the corresponding notes that each entity owed to 17 the debtor. 18 Q. Did you or someone prepare Exhibit 15 19 specifically for that email? Or was Exhibit 15 already 20 existing somewhere on the system? 21 A. I believe that we prepared it specifically 22 for this request. 23 Q. Do you recall who? 24 A. It was either myself or our accountant. I 25 don't recall who put it together.</p>

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<p style="text-align: right;">85</p> <p>1 Q. Okay. And where would that 23 million and 2 change number for NexPoint have come from, an 3 amortization schedule? 4 A. Yes. 5 Q. And what about Highland Capital Management 6 Fund Advisors? You see \$10.5 million and change demand 7 on Exhibit 15? 8 A. Yes. 9 Q. Where would that \$10.5 million number have 10 come from, do you remember? 11 A. The same. It would have come off of the 12 amortization schedules for all of their notes. 13 Q. How was there an amortization schedule for a 14 demand note? 15 A. Because it's accruing interest. 16 Q. So sitting here today, you expect there would 17 be some amortization schedule like Exhibit 14 but for 18 HCMFA? 19 A. Yes. 20 Q. Now we're going to have an exhibit [verbatim] 21 chain that's going to be marked as Exhibit 16. 22 (Whereupon, Exhibit 16 was marked for 23 identification.) 24 MR. RUKAVINA: For the folks on the video, 25 Exhibit 16 is the email chain that Mr. Morris used last</p>	<p style="text-align: right;">87</p> <p>1 Do you see that, ma'am? 2 A. Yes. 3 Q. 23 million 683? 4 A. Yes. 5 Q. And you see, HCMFA due to HCMLP as of 6 June 30, 2020, 12,286,000? 7 MR. MORRIS: Objection to the form of the 8 question. 9 Q. (BY MR. RUKAVINA) Strike that. 10 It says 12,286. What do you take that 12,286 11 to mean? 12 A. I think that's a typo and it should have 13 said -- well, there's several things wrong with this, 14 from looking at it. 15 She left off three zeros on the end of it. 16 Should have said 12,286,000. Secondly, that amount is 17 our due to affiliates on HCMFA's books, not just due to 18 HCMLP. 19 Q. That was going to be my question, why that 20 12,286,000 number didn't jive with the 10,530,000 21 number on Exhibit 15? 22 A. Yes, there's another loan due to a different 23 affiliate. 24 Q. So that \$12,286,000 amount doesn't mean that 25 it's all due to Highland; is that correct?</p>
<p style="text-align: right;">86</p> <p>1 week regarding the Section 15(c) document. 2 Q. (BY MR. RUKAVINA) Are you familiar with this 3 Exhibit 16 email chain, Ms. Hendrix? 4 A. Yes. 5 Q. Why are you familiar with it? 6 A. Well, I'm copied on it, and I saw it 7 yesterday. 8 Q. Do you have any memory -- well, that's a 9 stupid question. But prior to yesterday, did you have 10 any memory of this? 11 A. Yes. 12 Q. And do you recall the context or the purpose 13 of this exhibit, or this email chain? 14 A. From what I remember this is the time where 15 information was being prepared for the retail board to 16 re-up the debtor's shared services. 17 Q. So, here -- you're certainly welcome to read 18 it in its entirety and if you feel like you want to or 19 need to, that's fine. But I only have one question. 20 Well, one question with two subparts. 21 I'm looking at Ms. Lauren Thedford's, 22 T-h-e-d-f-o-r-d's, email October 6, 2000 [verbatim] 23 where she says, I see the below from the 6/30 24 financials. NPA, due to HCMLP and affiliates as of 25 June 30, 2020.</p>	<p style="text-align: right;">88</p> <p>1 A. Correct. 2 Q. Exhibit 17 is going to be the January 7, 2021 3 notice from the debtor to NexPoint about the default. 4 (Whereupon, Exhibit 17 was marked for 5 identification.) 6 Q. (BY MR. RUKAVINA) You've been handed 7 Exhibit 17. Have you seen this document before? 8 A. Not that I believe. 9 Q. And I think we've asked this before, but just 10 to clarify. 11 Did anyone at the debtor, including Mr. Seery 12 or DSI, discuss with you after December 31, 2020 that 13 the payment had not been made and what, if anything, 14 the debtor should do about that? 15 MR. MORRIS: Objection to the form of the 16 question. 17 THE WITNESS: I can't recall specific 18 conversations that may or may not have been had around 19 that topic. 20 Q. (BY MR. RUKAVINA) Would -- so back then you 21 were the assistant controller, on January 7; right? 22 A. Yes. 23 Q. Do you think that back then Mr. Seery or DSI 24 would have sought your advice or input as to what they 25 should do about the missed payment?</p>

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<p style="text-align: right;">89</p> <p>1 A. No.</p> <p>2 MR. MORRIS: Objection to the form of the</p> <p>3 question.</p> <p>4 THE WITNESS: No.</p> <p>5 Q. (BY MR. RUKAVINA) That would have been</p> <p>6 outside of your purview?</p> <p>7 A. Yes.</p> <p>8 Q. And you see in this notice in the middle, it</p> <p>9 says an amount due as of January 8 in the \$24,471,000</p> <p>10 range.</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Do you have any idea, I take it you don't,</p> <p>14 where that number came from?</p> <p>15 MR. MORRIS: Objection to the form of the</p> <p>16 question.</p> <p>17 THE WITNESS: I don't know who provided that</p> <p>18 number or where it came from.</p> <p>19 Q. (BY MR. RUKAVINA) Do you have any</p> <p>20 understanding as to why that number is higher than the</p> <p>21 number on Exhibit 15?</p> <p>22 A. My guess would be that Exhibit 15 is just</p> <p>23 principal balances.</p> <p>24 Q. Okay.</p> <p>25 Exhibit 18, please.</p>	<p style="text-align: right;">91</p> <p>1 Q. Were you aware of it then?</p> <p>2 A. Was I aware of what?</p> <p>3 Q. That transfer of \$1.4 million and change.</p> <p>4 A. On January 14?</p> <p>5 Q. Yes.</p> <p>6 A. Yes.</p> <p>7 Q. Did you facilitate that transfer?</p> <p>8 A. Yes.</p> <p>9 Q. Who told you to make that transfer?</p> <p>10 A. Frank Waterhouse.</p> <p>11 Q. Did he tell you why?</p> <p>12 A. Nope.</p> <p>13 Q. He just said make the transfer?</p> <p>14 A. Yes.</p> <p>15 Q. Did he tell you that it was on account of the</p> <p>16 NexPoint note?</p> <p>17 A. Yes.</p> <p>18 Q. Did he tell you how to, if at all, to credit</p> <p>19 that note for that amount?</p> <p>20 A. No.</p> <p>21 Q. Sitting here today, you have no memory other</p> <p>22 than that Frank Waterhouse told you to transfer some</p> <p>23 \$1.4 million on the NexPoint note?</p> <p>24 A. Right.</p> <p>25 Q. And do you recall, was that oral or written</p>
<p style="text-align: right;">90</p> <p>1 (Whereupon, Exhibit 18 was marked for</p> <p>2 identification.)</p> <p>3 Q. (BY MR. RUKAVINA) Exhibit 18, Ms. Hendrix,</p> <p>4 is an email chain between you and Mr. Waterhouse on</p> <p>5 January 12, 2021. Do you remember this email chain?</p> <p>6 A. No.</p> <p>7 Q. Do you remember on January 12 Mr. Waterhouse</p> <p>8 emailing you, asking when the last amort payment due</p> <p>9 and what the amount was for NexPoint?</p> <p>10 A. No.</p> <p>11 Q. When was the last time -- well, strike that.</p> <p>12 Do you remember ever seeing this email</p> <p>13 between then and today?</p> <p>14 A. No.</p> <p>15 Q. Do you have any present memory of any</p> <p>16 communications with Mr. Waterhouse on or about</p> <p>17 January 12, 2021 regarding the NexPoint default or</p> <p>18 note?</p> <p>19 A. Not specific, no.</p> <p>20 Q. Any general memory?</p> <p>21 A. Not that I can pinpoint, no.</p> <p>22 Q. Were you aware that on or about January 14</p> <p>23 NexPoint transferred about \$1.4 million and change to</p> <p>24 the debtor?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">92</p> <p>1 or how would that have been?</p> <p>2 A. That was a phone call.</p> <p>3 Q. Do you recall who initiated the phone call?</p> <p>4 A. Frank called me.</p> <p>5 Q. Was that the only topic discussed in that</p> <p>6 phone call to your memory?</p> <p>7 A. Yes.</p> <p>8 Q. Did you ask him why the payment or</p> <p>9 anything -- did you ask him anything at all?</p> <p>10 A. No.</p> <p>11 Q. And after you made the payment -- or I'm</p> <p>12 sorry, after you caused the payment to be made, did you</p> <p>13 take any further steps with respect to the NexPoint</p> <p>14 note?</p> <p>15 A. I forwarded the payment confirmation, showing</p> <p>16 that the money was sent from NexPoint Advisors to</p> <p>17 Highland, forwarded that payment confirmation from the</p> <p>18 bank to Jack Donohue at DSI, letting him know.</p> <p>19 Q. Did you let Mr. Donohue or anyone at DSI know</p> <p>20 about the transfer before the transfer was made?</p> <p>21 A. No.</p> <p>22 Q. And you sent that by email to Mr. Donohue?</p> <p>23 A. Yes.</p> <p>24 Q. Did Mr. Donohue thereafter have any</p> <p>25 discussion with you about that in any way?</p>

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<p style="text-align: right;">93</p> <p>1 A. I have no idea.</p> <p>2 Q. He didn't ask what this was for or anything</p> <p>3 like that?</p> <p>4 A. He may have asked what the amount</p> <p>5 represented. I can't specifically recall. But it's</p> <p>6 possible.</p> <p>7 Q. Okay. Do you recall any discussion about</p> <p>8 that time, January 14, with Mr. Donohue or</p> <p>9 Mr. Waterhouse or anyone as to whether that payment</p> <p>10 would in any way relieve NexPoint of the default or</p> <p>11 would not relieve NexPoint of the default?</p> <p>12 A. No.</p> <p>13 Q. Ms. Hendrix, I believe that I am done. I</p> <p>14 would like you, however, because it's important, to</p> <p>15 check your phone. Would you like a short, five-minute</p> <p>16 restroom break and just check --</p> <p>17 A. Yeah, and I might need help figuring out how</p> <p>18 to do that.</p> <p>19 Q. I'm not saying that it's possible, but I'm</p> <p>20 going to ask you on the record to look for that</p> <p>21 November 30 or December 1, 2020 phone call.</p> <p>22 MR. MORRIS: We're happy to do that.</p> <p>23 Q. (BY MR. RUKAVINA) But what I would like if</p> <p>24 you find it, I would like you to tell me the time, the</p> <p>25 date and the length of that call.</p>	<p style="text-align: right;">95</p> <p>1 proceedings today.</p> <p>2 I'm going to try to ask you some questions</p> <p>3 about these adversary proceedings. I'll try to make it</p> <p>4 as quick as possible so we don't keep you here.</p> <p>5 You understand that you're still under oath;</p> <p>6 is that correct?</p> <p>7 A. Correct.</p> <p>8 Q. First topic I want to ask you about is one of</p> <p>9 the defenses in this case related to an oral agreement.</p> <p>10 Let me start off with this question.</p> <p>11 Are you aware that some of the defendants in</p> <p>12 these adversary proceedings have raised a defense that</p> <p>13 there was a subsequent oral agreement allowing the</p> <p>14 notes at issue to be potentially forgiven if certain</p> <p>15 events occurred?</p> <p>16 A. I've recently been made aware that this came</p> <p>17 up, yes.</p> <p>18 Q. When you say recently, approximately when?</p> <p>19 A. Within the last week.</p> <p>20 Q. And where did you learn that from?</p> <p>21 A. In my speakings with John Morris just</p> <p>22 preparing for today.</p> <p>23 MR. AIGEN: And John, I'm going to assume</p> <p>24 that those conversations are privileged?</p> <p>25 MR. MORRIS: That's a very fair assumption.</p>
<p style="text-align: right;">94</p> <p>1 A. Okay.</p> <p>2 Q. Thank you.</p> <p>3 We'll be back in five minutes.</p> <p>4 (Off the record.)</p> <p>5 Q. (BY MR. RUKAVINA) Ms. Hendrix, during the</p> <p>6 break did you look at your phone?</p> <p>7 A. I did.</p> <p>8 Q. Did you find anything?</p> <p>9 A. Sadly, it only goes back to October 5 of</p> <p>10 2021.</p> <p>11 Q. Not surprised. Thank you.</p> <p>12 Have I been courteous to you today?</p> <p>13 A. Yes.</p> <p>14 MR. RUKAVINA: I pass the witness.</p> <p>15 MR. MORRIS: Thank you.</p> <p>16 MR. AIGEN: Are we ready to move forward?</p> <p>17 MR. MORRIS: Yes. You're a little dark</p> <p>18 there.</p> <p>19 MR. RUKAVINA: Can we increase the volume on</p> <p>20 that thing?</p> <p>21 (Off the record.)</p> <p>22 EXAMINATION</p> <p>23 Q. (BY MR. AIGEN) Good afternoon, Ms. Hendrix.</p> <p>24 My name is Michael Aigen. I represent Mr. Dondero,</p> <p>25 HCMS and HCRE Partners in several of the adversary</p>	<p style="text-align: right;">96</p> <p>1 Q. (BY MR. AIGEN) Other than the conversation</p> <p>2 you just referred to with Mr. Morris, have you ever had</p> <p>3 any other conversations with anyone about this alleged</p> <p>4 oral agreement that Defendants are contending occurred?</p> <p>5 A. No.</p> <p>6 Q. So prior to that conversation with Mr. Morris</p> <p>7 you weren't even aware of this alleged defense related</p> <p>8 to an oral agreement. Is that fair to say?</p> <p>9 A. That's right.</p> <p>10 Q. This is a similar question but slightly</p> <p>11 different, just to sort of finish this topic. I'm not</p> <p>12 asking about this oral agreement as a defense, I'm just</p> <p>13 asking more generally.</p> <p>14 Other than this conversation, were you aware</p> <p>15 generally of any conversations that anyone had where</p> <p>16 the notes at issue might be forgiven if certain events</p> <p>17 occurred?</p> <p>18 MR. MORRIS: Objection to the form of the</p> <p>19 question.</p> <p>20 THE WITNESS: No.</p> <p>21 Q. (BY MR. AIGEN) Is it fair to say that you</p> <p>22 haven't had any conversations about this subsequent</p> <p>23 oral agreement with anyone other than Mr. Morris?</p> <p>24 A. That's fair.</p> <p>25 Q. You never discussed it with Mr. Seery?</p>

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<p style="text-align: right;">97</p> <p>1 A. No.</p> <p>2 Q. Never discussed it with Mr. Klos?</p> <p>3 A. No. Well, sorry, Mr. Klos was present when</p> <p>4 John and I talked about it. But that's it.</p> <p>5 Q. Have you ever made any investigation or</p> <p>6 effort in order to determine if this oral agreement</p> <p>7 actually occurred?</p> <p>8 A. No.</p> <p>9 Q. If there was such an oral agreement to</p> <p>10 potentially forgive the notes, do you believe that you</p> <p>11 would have known about such an oral agreement as part</p> <p>12 of your duties and responsibilities?</p> <p>13 A. Yes, I would hope so.</p> <p>14 Q. Why do you say that?</p> <p>15 A. That's something that should be disclosed in</p> <p>16 audited financial statements, and me and my team are</p> <p>17 responsible for preparing those financial statements</p> <p>18 and presenting them to the auditors as fair and</p> <p>19 accurate.</p> <p>20 Q. And is it fair to say that this oral</p> <p>21 agreement should have been disclosed to PwC if it was</p> <p>22 determined that it was material?</p> <p>23 A. Yes.</p> <p>24 Q. And have you done any sort of analysis to</p> <p>25 determine whether the oral agreement at issue here</p>	<p style="text-align: right;">99</p> <p>1 A. Yes.</p> <p>2 Q. Can you tell me why?</p> <p>3 A. Sure. It goes along with the same statement</p> <p>4 as HCMFA and NPA and the phone call that I got from</p> <p>5 Frank Waterhouse saying there's no payments coming from</p> <p>6 any of the affiliates to the debtor.</p> <p>7 Q. I may have written that down wrong when you</p> <p>8 talked about that before, but I believe your earlier</p> <p>9 testimony when you described that conversation was that</p> <p>10 there was no more payments coming from the Advisors,</p> <p>11 not affiliates.</p> <p>12 Let me ask you then, what was the</p> <p>13 conversation? Was it no more payments from affiliates</p> <p>14 or Advisors?</p> <p>15 A. It could have been either. I probably did</p> <p>16 say Advisors. But regardless, those payments would</p> <p>17 have been directed to me to be made, either by Frank</p> <p>18 Waterhouse or Jim Dondero.</p> <p>19 And I would assume that nobody directed me to</p> <p>20 make those payments because we weren't making any</p> <p>21 payments from Jim's related parties. I don't know for</p> <p>22 a fact, but that's what I would assume. Those were all</p> <p>23 under the same umbrella.</p> <p>24 Q. And again, let's back up a second.</p> <p>25 When you refer to Advisors, fair to say that</p>
<p style="text-align: right;">98</p> <p>1 would have been material for purposes of a PwC audit?</p> <p>2 A. I've not done any work, just finding out</p> <p>3 about it, but from what it sounds like, it would be</p> <p>4 material.</p> <p>5 Q. That's your opinion, that it would have been</p> <p>6 material; is that fair to say?</p> <p>7 A. Fair.</p> <p>8 Q. Have you had any discussions with anyone else</p> <p>9 about whether the oral agreement would have been</p> <p>10 material?</p> <p>11 A. No.</p> <p>12 Q. Changing topics a little bit here, are you</p> <p>13 aware --</p> <p>14 (Off the record.)</p> <p>15 Q. (BY MR. AIGEN) Are you aware that a few of</p> <p>16 the loans at issue here, specifically related to HCMS</p> <p>17 and HCRE, were term loans as opposed to demand loans?</p> <p>18 A. Yes.</p> <p>19 Q. And are you aware that for those particular</p> <p>20 loans, there were payments that were supposed to be</p> <p>21 made but weren't on December 31, 2020?</p> <p>22 A. Yes.</p> <p>23 Q. Do you have any understanding as to why those</p> <p>24 payments weren't made with respect to the HCMS and HCRE</p> <p>25 term loans on December 31, 2020?</p>	<p style="text-align: right;">100</p> <p>1 that does not include HCMS and HCRE; is that correct?</p> <p>2 A. When I say Advisors, I am referring to HCMFA</p> <p>3 and NPA.</p> <p>4 Q. And when you use the term "affiliates,"</p> <p>5 you're referring to all four; is that correct?</p> <p>6 A. Correct.</p> <p>7 Q. Just want to make sure we're on the same</p> <p>8 page.</p> <p>9 When you answered the previous question you</p> <p>10 started to get into assumptions and things like that.</p> <p>11 Let me start off with what your specific recollection</p> <p>12 of that phone call was. Tell me as best as you can</p> <p>13 what you remember Frank telling you?</p> <p>14 A. I remember it as being no payments from the</p> <p>15 Advisors to the debtor.</p> <p>16 Q. So you don't remember the instruction being,</p> <p>17 don't make payments from the affiliates. It was, don't</p> <p>18 make payments from the Advisors; is that correct?</p> <p>19 A. Correct.</p> <p>20 Q. So is it fair to say that you don't remember</p> <p>21 any instructions telling you not to make any payments</p> <p>22 from HCMS or HCRE?</p> <p>23 A. That's fair.</p> <p>24 Q. So if that is the case, why weren't payments</p> <p>25 made from HCMS or HCRE for December 31, 2020, payment?</p>

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<p style="text-align: right;">101</p> <p>1 A. Sure. Typically what would have happened is</p> <p>2 Frank would be talking to Jim Dondero about making</p> <p>3 these payments and getting his approval to do so,</p> <p>4 because Jim Dondero is, you know, directing payments</p> <p>5 out of these entities.</p> <p>6 I have never -- had never been given the</p> <p>7 direction to effectuate those payments by anybody.</p> <p>8 Q. Is it fair to say, then, that you're not</p> <p>9 aware of any instructions from anyone saying that the</p> <p>10 HCMS and HCRE payments should not be made on</p> <p>11 December 31, 2020?</p> <p>12 A. That's fair.</p> <p>13 Q. So the reason the payments weren't made is</p> <p>14 because you never got an affirmative instruction to</p> <p>15 actually make that payment; is that correct?</p> <p>16 A. Correct.</p> <p>17 Q. And you're not aware of Mr. Dondero</p> <p>18 instructing anyone that HCMS and HCRE should not have</p> <p>19 made the December 31, 2020, payments; is that correct?</p> <p>20 A. I'm not aware personally, no. Correct.</p> <p>21 Q. You say personally. In any way are you aware</p> <p>22 of such a specific instruction?</p> <p>23 A. No.</p> <p>24 Q. If that payment was to be made, who at the</p> <p>25 debtor would have been responsible for making those</p>	<p style="text-align: right;">103</p> <p>1 Q. And is that because it's only your job to</p> <p>2 make payments that you're told to specifically make; is</p> <p>3 that correct?</p> <p>4 A. Yes, in this case, that is correct.</p> <p>5 Q. Is it fair to say then that as part of your</p> <p>6 job responsibilities you've never made a payment to</p> <p>7 anyone without being specifically told by Mr. Dondero</p> <p>8 and Mr. Waterhouse?</p> <p>9 A. Sorry, say that again.</p> <p>10 Q. As part of your job responsibilities, have</p> <p>11 you ever made a payment to anyone without the specific</p> <p>12 instruction of Mr. Waterhouse or Mr. Dondero?</p> <p>13 MR. MORRIS: Objection to the form of the</p> <p>14 question.</p> <p>15 THE WITNESS: Yes, we make payments all the</p> <p>16 time.</p> <p>17 Q. (BY MR. AIGEN) So why is this different in</p> <p>18 that this payment was not made without the specific</p> <p>19 instructions from Mr. Waterhouse and Mr. Dondero, even</p> <p>20 though you believed the payment was due on December 31,</p> <p>21 2020?</p> <p>22 A. The difference between making a loan payment</p> <p>23 and making normal course -- or sorry, normal, ordinary</p> <p>24 course, you know, overhead expense payments is that</p> <p>25 something like that is not necessarily what we would</p>
<p style="text-align: right;">102</p> <p>1 payments on behalf of HCMS and HCRE?</p> <p>2 MR. MORRIS: Objection to the form of the</p> <p>3 question.</p> <p>4 THE WITNESS: The corporate accounting team.</p> <p>5 Q. (BY MR. AIGEN) And that included you?</p> <p>6 A. Yes.</p> <p>7 Q. And in December of 2020, were you aware that</p> <p>8 those payments were due on December 31, 2020?</p> <p>9 A. Yes.</p> <p>10 Q. Did you make any attempts or efforts to</p> <p>11 determine whether Mr. Dondero wanted those payments to</p> <p>12 be made?</p> <p>13 A. I did not, no.</p> <p>14 Q. Why not?</p> <p>15 A. That would have been something that Frank</p> <p>16 Waterhouse would have done directly with Jim Dondero</p> <p>17 himself.</p> <p>18 Q. Did you have any conversations with anyone</p> <p>19 about whether the December 31 payments for HCMS and</p> <p>20 HCRE would be made in December of 2020?</p> <p>21 A. Not that I can recall.</p> <p>22 Q. And you didn't think it was your</p> <p>23 responsibility to check on those payments and find out</p> <p>24 if they should have been made?</p> <p>25 A. Right, correct.</p>	<p style="text-align: right;">104</p> <p>1 take to Jim Dondero to approve.</p> <p>2 He doesn't have time to approve every single</p> <p>3 overhead payment that we're making out of every single</p> <p>4 entity. That's what Frank is for.</p> <p>5 Something that's once a year that's more</p> <p>6 material in amount, such as a loan payment, that is</p> <p>7 something that needs to get approved by Jim Dondero.</p> <p>8 Q. You say needs to get approved. What's your</p> <p>9 basis for that, something in a policy manual, something</p> <p>10 someone told you?</p> <p>11 A. It's a policy that my team followed. I don't</p> <p>12 think that it's written in an actual manual anywhere,</p> <p>13 but anything that's not ordinary course needs to get</p> <p>14 approved by Jim Dondero.</p> <p>15 Q. Is that something that's written in a policy</p> <p>16 anywhere?</p> <p>17 A. Not that I know of.</p> <p>18 Q. Were you ever told that payments in the</p> <p>19 ordinary course can be made without Mr. Dondero's</p> <p>20 approval but loan payments cannot?</p> <p>21 A. Yes, I do recall years ago that Frank and I,</p> <p>22 possibly Jim, this was years ago, had a conversation</p> <p>23 that anything ordinary course is up to Frank to</p> <p>24 approve. And this is, quite frankly, up to Frank.</p> <p>25 Whatever he felt Jim needed to sign off on,</p>

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<p style="text-align: right;">105</p> <p>1 that's what Jim would sign off on. This was not my 2 responsibility to make that decision. 3 Q. And in December -- prior to the December 31, 4 2020, due date you didn't have any conversations with 5 anyone about whether this -- these payments that were 6 due should be made; is that correct? 7 A. Correct. 8 Q. And you didn't try to check with anyone to 9 see whether anyone wanted these payments to be made; is 10 that correct? 11 A. Correct. 12 Q. Subsequent to the payment being missed, did 13 you ever have any conversations with anyone about why 14 the payment was not made? 15 A. Not that I recall. 16 Q. So is it fair to say that sitting here today 17 you have no idea why the payments were not made for 18 HCMS and HCRE on December 31, 2020? 19 MR. MORRIS: Objection to the form of the 20 question. 21 THE WITNESS: I don't have any specific 22 evidence telling me why they weren't. I can make 23 assumptions but that's not going to help. 24 Q. (BY MR. AIGEN) Well, did you ever have any 25 conversations with anyone about why those payments were</p>	<p style="text-align: right;">107</p> <p>1 A. I can't tell you the exact date, but, yes, I 2 do have a recollection of Frank calling or emailing me 3 to have, I believe it was the HCRE wire sent out for 4 their payment. 5 Q. What about the HCMS payment? 6 A. I don't recall that one as much. 7 Q. Other than the payment being made, do you 8 have any recollection of any other conversations about 9 why the payment was being made? 10 A. No. 11 Q. Are you aware of any conversations that 12 anyone had regarding whether these payments would 13 deaccelerate loans? 14 A. No. 15 Q. Is that something you would normally be part 16 of, conversations like that? 17 A. No. 18 Q. Changing topics here. Not sure if this is an 19 area that you know anything about. 20 Are you familiar with the term, as it's used 21 at Highland, NAV ratio trigger period? 22 A. No. 23 Q. This may go very quick. If I represent to 24 you that it's a term that's used in the -- in the 25 fourth amended limited partnership agreement for</p>
<p style="text-align: right;">106</p> <p>1 not made? 2 A. No. 3 Q. You have no idea why they weren't made other 4 than just speculation; is that fair to say? 5 A. Correct. 6 MR. MORRIS: Objection. Asked and answered. 7 THE WITNESS: Correct. 8 Q. (BY MR. AIGEN) And are you aware that with 9 respect to those two loans, some payments were actually 10 made in the next month, in January of 2021? 11 A. Yes. 12 Q. What role, if any, did you have with respect 13 to those payments? 14 A. Frank Waterhouse would call me and tell me to 15 have my team effectuate a wire. 16 Q. And you say would call you. Do you remember 17 this conversation or are you just assuming it occurred? 18 MR. MORRIS: Objection to the form of the 19 question. 20 THE WITNESS: If we sent a payment out, Frank 21 would have told me to do it. I would not have done it 22 on my own. 23 Q. (BY MR. AIGEN) Sitting here today, do you 24 have a specific recollection of the conversation where 25 someone told you to make the January 2021 payments?</p>	<p style="text-align: right;">108</p> <p>1 Highland Capital Management, would that refresh your 2 recollection at all? 3 A. No. 4 Q. Fair to say, then, that you have no knowledge 5 as to whether NAV ratio trigger period was ever reached 6 at any time prior to bankruptcy buyouts? 7 A. No, I don't know. 8 Q. Have you ever had any conversations with 9 Nancy Dondero? 10 A. I have not. 11 Q. Never met her? 12 A. No. I may have exchanged an email with her 13 on an invoice, but that's the extent of it. No 14 conversations. 15 Q. In the years leading up to the bankruptcy of 16 Highland Capital, was there any time period where 17 Highland was unable to pay its salaries? 18 A. Salaries? 19 Q. Salaries of its employees? 20 A. No. 21 Q. In the time leading up to the Highland 22 bankruptcy, was there any time period where Highland 23 wasn't able to pay bonuses owed to any of its 24 employees? 25 A. Not that I know of. Not that I can recall.</p>

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<p style="text-align: right;">109</p> <p>1 Q. Are you aware of any time period leading up 2 to the Highland bankruptcy where Highland was unable to 3 pay its bills? 4 A. There's times where we would be in a cash 5 flow crunch and we would stretch our AP, but eventually 6 it would get paid. 7 Q. And I think this is the last topic and we can 8 probably move through this pretty quickly. 9 Are you aware of any loans made by Highland 10 to any of its employees or officers that were forgiven 11 in part or all? 12 A. Yes. 13 Q. Which officers or employees are you aware of? 14 A. I recall there were two employees. I can't 15 remember one of them, but I believe another, the second 16 one, was Paul Adkins. Again, I'm just recalling this 17 was years ago. 18 Q. And these two are the only ones you're aware 19 of? 20 A. Or I'm sorry, not Paul Adkins, Tim Lawler. 21 It's possible Paul Adkins was the other one, but I 22 can't tell you for sure. 23 Q. Tim Lawler and some other employee that you 24 can't remember the name of are the only two that you're 25 aware of?</p>	<p style="text-align: right;">111</p> <p>1 behalf of HCMFA in May of 2019 to bind HCMFA to such 2 notes? 3 A. No. 4 Q. Thank you, ma'am. 5 EXAMINATION 6 Q. (BY MR. MORRIS) Ms. Hendrix, can you get out 7 of your pile, Exhibit Number 3. 8 And this is the email from Dave Klos to 9 corporate accounting on May 2nd concerning the 10 \$2.4 million that was going to be transferred from 11 HCMLP to HCMFA? 12 A. Yes. 13 Q. And how did Mr. Klos characterize that 14 transfer? 15 A. He called it a new intercompany loan. 16 Q. What does a new intercompany loan mean to 17 you? 18 A. That means we are creating a new loan 19 document, sending money out, tracking it as a 20 brand-new, fresh loan. 21 Q. And he sent this email to an email group 22 called corporateaccounting@hcmlp.com. Do I have that 23 right? 24 A. Yes. 25 Q. Were you included in that email group?</p>
<p style="text-align: right;">110</p> <p>1 A. Yes. 2 Q. This other employee, I know you don't 3 remember the name. Is there any other description that 4 you can give me, what their position was, how long they 5 worked, or is it just you remember those loans? 6 A. I just remember we had two employee loans. 7 Q. Approximately when was this? 8 A. I couldn't even tell you. All the years just 9 commingle together. 10 Q. More than five years ago? 11 A. Yes. 12 Q. More than 10 years ago? 13 A. I couldn't say. 14 MR. AIGEN: Why don't we take a five-minute 15 break and then I'll either be done or have just a few 16 wrap-up questions. 17 MR. RUKAVINA: Okay. 18 (Off the record.) 19 FURTHER EXAMINATION 20 Q. (BY MR. RUKAVINA) Ms. Hendrix, in May of 21 2019, would you on behalf of Highland alone, 22 unilaterally, have the authority to lend to HCMFA 2.4- 23 and/or \$5.0 million? 24 A. No. 25 Q. And would you have had any authority on</p>	<p style="text-align: right;">112</p> <p>1 A. I was. 2 Q. Can you identify everybody else who you 3 recall being in that email group? 4 A. Yes. 5 Q. Who else was in that email group? 6 A. Dave Klos, Frank Waterhouse, myself, Hayley 7 Eliason, and Blair Roeber. 8 Q. Okay. Did Mr. Waterhouse ever tell anybody, 9 to the best of your knowledge, in May 2019 that the 10 transaction should not be booked as a loan? 11 A. No, not to my knowledge. 12 Q. You testified earlier that there was, you 13 recall, a similar email the next day with respect to a 14 \$5 million transaction. 15 Do you recall that? 16 A. Yes. 17 Q. Do you recall if that email also went to 18 corporate accounting? 19 A. I believe so, yes. 20 Q. And to the best of your knowledge, would 21 Mr. Waterhouse have been informed on May 3, 2019, that 22 the transaction was being booked by the corporate 23 accounting department as a loan? 24 A. Yes. 25 Q. Did Mr. Waterhouse tell you at that time or</p>

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<p style="text-align: right;">113</p> <p>1 at any time thereafter that it was a mistake to book it 2 as a loan? 3 A. No. 4 Q. Did Mr. Waterhouse tell you at that time or 5 at any time thereafter that he didn't intend to sign 6 the promissory notes? 7 A. No. 8 MR. RUKAVINA: Objection. To the last 9 question, objection to form. 10 Go ahead. 11 Q. (BY MR. MORRIS) Okay. The promissory notes, 12 to be clear, are the two promissory notes that you 13 testified to earlier that have been marked as exhibits 14 in this deposition for \$5 million and \$2.4 million 15 respectively. 16 With that definition as promissory notes, did 17 Mr. Waterhouse ever tell you at any time that it was a 18 mistake to sign those notes? 19 MR. RUKAVINA: I'll object to the form. 20 Go ahead. 21 THE WITNESS: No. 22 Q. (BY MR. MORRIS) Did Mr. Waterhouse or 23 anybody -- withdrawn. I'll go back to the first 24 question. 25 Did Mr. Waterhouse or anybody in the world</p>	<p style="text-align: right;">115</p> <p>1 HCMFA. I oversaw all other aspects of the audit my 2 team carried out. 3 Any requests from the auditors, emails with 4 questions, any issues that arose, all of that went 5 through me. 6 Q. And did Mr. Waterhouse play a role in 7 relation to the annual audit? 8 A. Yes. 9 Q. What is your understanding of 10 Mr. Waterhouse's role? 11 A. Let's see. He was in charge of reviewing the 12 financial statements as they were done, so he saw the 13 end product. He would sign off on the management rep 14 letter. He signed engagement letters. 15 If there were any big issues, those got -- 16 those would be brought to Frank's attention for sure. 17 Q. Okay. And are you a CPA? 18 A. Yes. 19 Q. And are you familiar with management rep 20 letters? 21 A. Yes. 22 Q. What is your understanding of what a 23 management rep letter is? 24 A. That's basically telling the auditors that 25 everything in the audited financial report is accurate</p>
<p style="text-align: right;">114</p> <p>1 ever tell you at any time since May of 2019 that it was 2 a mistake to issue the promissory notes as we've 3 defined them? 4 A. No. 5 Q. Did Mr. Waterhouse or anybody in the world 6 tell you that Mr. Waterhouse wasn't authorized to affix 7 his signature to those promissory notes? 8 MR. RUKAVINA: And I'll object. Assumes 9 facts not in evidence, i.e., the signature. That's 10 what I've been objecting to. 11 But go ahead and answer. 12 THE WITNESS: Say it again. 13 Q. (BY MR. MORRIS) Did Mr. Waterhouse or 14 anybody in the world tell you at any time that he 15 wasn't authorized to have his signature affixed to the 16 promissory notes? 17 MR. RUKAVINA: Same objection. 18 THE WITNESS: No. 19 Q. (BY MR. MORRIS) Did you have anything to do 20 with Highland's annual audit? 21 A. Yes. 22 Q. What role did you play with respect to 23 Highland's annual audit? 24 A. I personally was in charge of completely 25 writing the entire audit report for the debtor and for</p>	<p style="text-align: right;">116</p> <p>1 to the best of their knowledge, they've presented 2 everything that they have fair and accurately, they're 3 not withholding any information. 4 Q. And do you recall that the -- Highland's 2018 5 audit was completed in early June 2019? 6 A. Yes. 7 Q. And did you cause the two promissory notes 8 that we're talking about here to be delivered to 9 PricewaterhouseCoopers in connection with the audit? 10 A. Yes. 11 Q. And were those two promissory notes delivered 12 to PricewaterhouseCoopers because they constituted 13 subsequent events? 14 A. Yes. 15 Q. Do you recall whether those promissory notes 16 were described in Highland's 2018 audited financial 17 statements? 18 A. Yes. 19 Q. And did Mr. Waterhouse or Mr. Dondero ever 20 tell you at any time that there was a mistake in the 21 audited financial statements? 22 A. No. 23 Q. Did they ever tell you -- did Mr. Waterhouse 24 or Mr. Dondero or anybody in the world ever tell you at 25 any time that the two notes were mischaracterized in</p>

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<p style="text-align: right;">117</p> <p>1 the 2018 audited financial statements of Highland 2 Capital? 3 A. No. 4 Q. Do you know whether HCMFA also had its annual 5 financial statements audited by PricewaterhouseCoopers? 6 A. Yes. 7 Q. Did you play any role in connection with that 8 audit? 9 A. Yes. 10 Q. What role did you play in connection with 11 HCMFA's audit of the 2018 financial statements? 12 A. Same exact role as with the debtors -- 13 Q. And -- 14 A. -- writing the audit report, overseeing all 15 other audit functions. 16 Q. And did you and your group cause HCMFA to 17 deliver to PricewaterhouseCoopers the two promissory 18 notes that we've been discussing from May 2019? 19 A. Yes. 20 Q. Did Mr. Waterhouse or Mr. Dondero or anybody 21 in the world ever tell you that it was a mistake to 22 deliver those promissory notes to PwC in connection 23 with HCMFA's 2018 audit? 24 A. No. 25 Q. Were those notes delivered -- withdrawn.</p>	<p style="text-align: right;">119</p> <p>1 reference to these notes in HCMFA's 2018 audited 2 financial statements? 3 MR. RUKAVINA: Same objection. 4 THE WITNESS: No. 5 Q. (BY MR. MORRIS) Okay. Do you recall, did 6 anybody in the world ever tell you that the 7 transactions described in Exhibit 3 and the other 8 document that you recall should never have been booked 9 as a loan? 10 A. No. 11 Q. Did anybody in the world tell you that you 12 made a mistake when you created those promissory notes? 13 A. No. 14 Q. Can you pull out what was marked as 15 Exhibit 16. 16 Do you understand that the Advisors provide 17 services to certain retail funds? 18 A. Yes. 19 Q. And do you recall that the services are 20 subject to an agreement that's subject to annual 21 review? 22 A. Yes. 23 Q. So looking at Exhibit 16, did you understand 24 that the retail board had asked Highland to disclose -- 25 I'll just read it from the document on page 2,</p>
<p style="text-align: right;">118</p> <p>1 Were those notes delivered to 2 PricewaterhouseCoopers because they constituted 3 subsequent events in connection with the 2018 audit? 4 A. Yes. 5 Q. Do you recall whether PricewaterhouseCoopers 6 included as a liability on HCMFA's balance sheet the 7 obligations reflected in the two promissory notes at 8 issue? 9 MR. RUKAVINA: Objection. Best evidence. 10 Answer. 11 THE WITNESS: On the 2018 financials? 12 Q. (BY MR. MORRIS) Correct. 13 A. Those would not have been included as 14 liabilities in the 2018 financials. 15 Q. Do you know if HCMFA completed their audit 16 for 2019? 17 A. No. 18 Q. Okay. Did the notes appear in HCMFA's 2018 19 audited financials under the subsequent events section? 20 A. Yes. 21 MR. RUKAVINA: Objection. Best evidence. 22 Go ahead. 23 Q. (BY MR. MORRIS) Did Mr. Dondero or -- did 24 Mr. Waterhouse or Mr. Dondero or anybody in the world 25 ever tell you that it was a mistake to include</p>	<p style="text-align: right;">120</p> <p>1 Bates number ending 881. 2 There's an email from Ms. Thedford that says, 3 quote, are there any material amounts -- withdrawn. 4 Are there any material outstanding amounts 5 currently payable or due in the future, open paren, 6 e.g., notes, close paren, to HCMLP by HCMFA or NexPoint 7 Advisors or any other affiliate that provides services 8 to the funds? 9 Do you see that? 10 A. Yes. 11 Q. And were you generally aware that that was 12 part of the annual renewal process? 13 A. Yes. 14 Q. And you made some comments earlier about 15 Ms. Thedford's response on the first page. 16 Do you recall that? 17 A. Yes. 18 Q. And you actually were able to correct certain 19 mistakes that you perceived in her response. 20 Do I have that right? 21 A. Correct. 22 Q. Do you know -- do you see where it says, 23 HCMFA due to HCMLP as of June 30, 2020, let's just call 24 it \$12.3 million. 25 Do you see that?</p>

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<p style="text-align: right;">121</p> <p>1 A. Yes.</p> <p>2 Q. And above that there is a reference to the</p> <p>3 6/30 financials.</p> <p>4 Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. Do you know what the reference to the 6/30</p> <p>7 financials is?</p> <p>8 A. Yes.</p> <p>9 Q. And what is that reference?</p> <p>10 A. That is referencing the amounts on the</p> <p>11 balance sheet at 6/30 that we provided for the 15(c)</p> <p>12 materials to the board.</p> <p>13 Q. Okay. And does that \$12.3 million include,</p> <p>14 to the best of your knowledge, the principal amount of</p> <p>15 the two notes that we were talking about?</p> <p>16 A. Yes.</p> <p>17 MR. RUKAVINA: Objection. Best evidence.</p> <p>18 THE WITNESS: Yes.</p> <p>19 Q. (BY MR. MORRIS) And how do you know that?</p> <p>20 A. Because I kept their financials, I know for a</p> <p>21 fact that it included all of their outstanding notes</p> <p>22 and it most certainly included these two notes that</p> <p>23 we've been talking about today.</p> <p>24 Q. And to the best of your recollection did</p> <p>25 HCMFA provide the 6/30 financials to the retail board?</p>	<p style="text-align: right;">123</p> <p>1 was given to the retail board?</p> <p>2 A. I likely did. I can't tell you for certain</p> <p>3 that I was on the correspondence.</p> <p>4 Q. Do you recall any discussion at any time that</p> <p>5 the \$12.3 million number in Ms. Thedford's email should</p> <p>6 be changed in the final report to the retail board?</p> <p>7 A. I don't believe so.</p> <p>8 Q. Did anybody ever tell you at any time that</p> <p>9 the \$12.3 million number was incorrect?</p> <p>10 A. No.</p> <p>11 Q. Did anybody ever tell you at any time that</p> <p>12 that number wrongly included the \$7.4 million reflected</p> <p>13 in the two notes?</p> <p>14 A. No.</p> <p>15 Q. Okay. Do you recall that earlier that</p> <p>16 summer -- we looked at Exhibit 15?</p> <p>17 A. Yep.</p> <p>18 Q. And that was an attachment to an email that</p> <p>19 you personally sent to Mr. Dondero. We saw that</p> <p>20 before?</p> <p>21 A. Right.</p> <p>22 Q. And this Exhibit 15, which was attached to</p> <p>23 your email, identifies amounts due and owing from</p> <p>24 NexPoint Advisors; right?</p> <p>25 A. Right.</p>
<p style="text-align: right;">122</p> <p>1 A. Yes.</p> <p>2 Q. And to the best of your knowledge did</p> <p>3 Mr. Dondero or Mr. Waterhouse or anybody in the world</p> <p>4 ever tell you that the financial statements that were</p> <p>5 provided to the retail board were erroneous in any way?</p> <p>6 A. No.</p> <p>7 Q. Did Mr. Dondero or Mr. Waterhouse or anybody</p> <p>8 in the world ever tell you that the 6/30 financials</p> <p>9 that were given to the retail board should not have</p> <p>10 included the \$7.4 million principal amount on the two</p> <p>11 promissory notes?</p> <p>12 MR. RUKAVINA: Objection. Best evidence.</p> <p>13 Answer.</p> <p>14 THE WITNESS: No.</p> <p>15 Q. (BY MR. MORRIS) Do you know whether -- are</p> <p>16 you at all familiar with the Advisors' actual response</p> <p>17 to the retail board in October 2020?</p> <p>18 A. Say that again, please.</p> <p>19 Q. So this email string is October 2020; right?</p> <p>20 A. Right.</p> <p>21 Q. And do you understand that this is kind of a</p> <p>22 discussion between Mr. Waterhouse and Ms. Thedford as</p> <p>23 to how to respond?</p> <p>24 A. Yes.</p> <p>25 Q. Have you ever seen the actual response that</p>	<p style="text-align: right;">124</p> <p>1 Q. And it identifies amounts due and owing for a</p> <p>2 number of different entities, including HCMFA; right?</p> <p>3 A. Correct.</p> <p>4 Q. Do you know whether the amount included for</p> <p>5 HCMFA on Exhibit 15 included the principal amount due</p> <p>6 on the two promissory notes?</p> <p>7 A. It does.</p> <p>8 Q. Did Mr. Dondero or Mr. Waterhouse ever ask</p> <p>9 you why -- withdrawn.</p> <p>10 Did Mr. Dondero or Mr. Waterhouse ever ask</p> <p>11 you how the \$10.5 million number was calculated?</p> <p>12 A. No.</p> <p>13 Q. Did Mr. Dondero or Mr. Waterhouse ever</p> <p>14 suggest to you that the number was incorrect?</p> <p>15 A. No.</p> <p>16 Q. Did Mr. Dondero or Mr. Waterhouse or anybody</p> <p>17 in the world ever question the number that you gave to</p> <p>18 Mr. Dondero in the summer of 2020 concerning the</p> <p>19 principal amount due by HCMFA to HCMLP?</p> <p>20 A. No.</p> <p>21 Q. Have you ever made a payment -- withdrawn.</p> <p>22 Have you ever caused a payment to be made in</p> <p>23 connection with an intercompany loan without receiving</p> <p>24 the prior approval from either Frank Waterhouse or</p> <p>25 Mr. Dondero?</p>

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<p style="text-align: right;">125</p> <p>1 A. No.</p> <p>2 Q. Has anybody ever said to you that you made a</p> <p>3 mistake in applying a payment against principal or</p> <p>4 interest due on an intercompany loan?</p> <p>5 A. No.</p> <p>6 Q. We saw this morning, and we produced to</p> <p>7 Mr. Rukavina and he mentioned earlier, 13-week</p> <p>8 forecasts? Do you understand that?</p> <p>9 A. Yes.</p> <p>10 Q. Did you review the 13-week forecasts</p> <p>11 recently?</p> <p>12 A. Yes.</p> <p>13 Q. And we're talking specifically about the</p> <p>14 13-week forecasts for the November/December 2020 time</p> <p>15 period. Do you understand that?</p> <p>16 A. Yes.</p> <p>17 Q. Based on your review of those forecasts, did</p> <p>18 those forecasts specifically identify the principal and</p> <p>19 interest that were due on the three term notes as of</p> <p>20 December 28, 2020?</p> <p>21 A. Yes.</p> <p>22 Q. And what was the purpose of creating the</p> <p>23 13-week forecasts?</p> <p>24 A. Sure. That was to keep everybody informed</p> <p>25 who was on the cash call, Frank Waterhouse, Jim Seery</p>	<p style="text-align: right;">127</p> <p>1 A. Yes.</p> <p>2 Q. And was that information that was included on</p> <p>3 the reports to Mr. Waterhouse?</p> <p>4 A. Yes.</p> <p>5 Q. And do you recall whether there were any</p> <p>6 specific discussions in November or December of 2020</p> <p>7 concerning those payments -- withdrawn. That wasn't a</p> <p>8 good question.</p> <p>9 Did Mr. Waterhouse or -- withdrawn.</p> <p>10 Did anybody on behalf of HCMS or HCRE ever</p> <p>11 instruct you to make the payments that were due under</p> <p>12 their term notes?</p> <p>13 A. No.</p> <p>14 Q. Did anybody on behalf of NexPoint ever</p> <p>15 instruct you to make a payment that was due at year end</p> <p>16 with respect to the NexPoint term note?</p> <p>17 A. No.</p> <p>18 Q. Were you authorized to make those payments</p> <p>19 without the prior approval of either Mr. Waterhouse or</p> <p>20 Mr. Dondero?</p> <p>21 A. No.</p> <p>22 Q. I think you testified that there were certain</p> <p>23 payments that were made in January 2001 under each of</p> <p>24 the three term notes.</p> <p>25 Do I have that right?</p>
<p style="text-align: right;">126</p> <p>1 and others, keep everybody informed of upcoming</p> <p>2 payments that were due on term loans well in advance.</p> <p>3 Everybody knew about it. It was out there</p> <p>4 for everybody to see that was on these cash calls.</p> <p>5 Q. Now, is it your understanding that</p> <p>6 Mr. Waterhouse -- withdrawn.</p> <p>7 Did you email these forecasts -- withdrawn.</p> <p>8 Did anybody email these forecasts to the best</p> <p>9 of your recollection in late 2020?</p> <p>10 A. Yes.</p> <p>11 Q. And was it sent to the corporate accounting</p> <p>12 group that we saw earlier?</p> <p>13 A. It was probably sent to Frank, Seery, the DSI</p> <p>14 guys that were involved with the cash call.</p> <p>15 Q. Okay. And so did you participate in the</p> <p>16 creation of the 13-week forecasts?</p> <p>17 A. Yes.</p> <p>18 Q. What role did you play in the creation of the</p> <p>19 13-week forecasts?</p> <p>20 A. I was responsible for creating the entire</p> <p>21 thing.</p> <p>22 Q. Okay. And based on the work that you did,</p> <p>23 was one of the purposes to make sure that</p> <p>24 Mr. Waterhouse was aware of all payments that were</p> <p>25 coming due under the intercompany notes?</p>	<p style="text-align: right;">128</p> <p>1 A. Correct.</p> <p>2 MR. RUKAVINA: 2021.</p> <p>3 MR. MORRIS: Thank you very much.</p> <p>4 Q. (BY MR. MORRIS) With that amendment, do you</p> <p>5 understand my question?</p> <p>6 A. Yes.</p> <p>7 Q. Do you know why the three payments were made</p> <p>8 in January of 2021 on each of three term notes?</p> <p>9 A. Because Frank Waterhouse instructed me to do</p> <p>10 so.</p> <p>11 Q. And he had not instructed you to make those</p> <p>12 payments prior to that time?</p> <p>13 A. Correct.</p> <p>14 Q. Did you have to prompt Frank Waterhouse in</p> <p>15 January of 2021 to make those payments?</p> <p>16 A. No.</p> <p>17 Q. So based on the 13-week forecast that you</p> <p>18 prepared and delivered to Mr. Waterhouse, is it your</p> <p>19 understanding that Mr. Waterhouse knew as early as mid</p> <p>20 November 2020 that payments would be due under the</p> <p>21 three term notes at the end of the year?</p> <p>22 A. Yes.</p> <p>23 Q. And, in fact, did HCMS and HCRE and NexPoint</p> <p>24 timely make their installment payments that were due at</p> <p>25 year end 2018?</p>

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<p style="text-align: right;">129</p> <p>1 A. Yes.</p> <p>2 Q. And was that done because HCMLP received the</p> <p>3 instructions of somebody authorized to give the</p> <p>4 instruction on behalf of those entities?</p> <p>5 A. Yes.</p> <p>6 Q. Did HCMS and HCRE and NexPoint timely make</p> <p>7 the installment payments that were due at year end</p> <p>8 2019?</p> <p>9 A. Yes.</p> <p>10 Q. And why did they make those payments?</p> <p>11 A. Because we were provided instruction and</p> <p>12 authorization to do so.</p> <p>13 Q. Okay. And is the only reason that the</p> <p>14 payment wasn't made at year end 2020 because nobody on</p> <p>15 behalf of the Advisors -- withdrawn.</p> <p>16 Is the only reason that no payment was made</p> <p>17 at the end of 2020 is because no one on behalf of</p> <p>18 NexPoint, HCRE, or HCMS directed HCMLP to make those</p> <p>19 payments?</p> <p>20 A. Correct.</p> <p>21 MR. AIGEN: Objection. Form.</p> <p>22 Q. (BY MR. MORRIS) And you testified earlier to</p> <p>23 a call that you had with Mr. Waterhouse. I think you</p> <p>24 said it was either November 30 or December 1.</p> <p>25 Do you recall that?</p>	<p style="text-align: right;">131</p> <p>1 any reason they weren't, then they were going to raise</p> <p>2 an issue, a going concern issue.</p> <p>3 That came up several years in a row with</p> <p>4 HCMFA.</p> <p>5 Q. Do you recall that the three term notes at</p> <p>6 issue here were all signed on May 31, 2017?</p> <p>7 A. Yes.</p> <p>8 Q. And all of those term notes involved a</p> <p>9 roll-up of previously issued demand notes; is that</p> <p>10 right?</p> <p>11 A. Correct.</p> <p>12 Q. Do you know why in -- at the end of May 2017</p> <p>13 NexPoint, HCRE, and HCMS rolled up their demand notes</p> <p>14 into individualized term notes?</p> <p>15 A. Yes.</p> <p>16 Q. What is your understanding as to why that</p> <p>17 happened?</p> <p>18 A. That would get the auditors a little bit more</p> <p>19 comfort over our outstanding loans, ensuring that we</p> <p>20 have an amortization schedule, an underlying contract,</p> <p>21 showing that payments will be coming in every year on</p> <p>22 these outstanding receivables.</p> <p>23 Q. Okay. As the person responsible for</p> <p>24 preparing Highland's audit, did anybody ever tell you</p> <p>25 at any time that any of the notes were not valid</p>
<p style="text-align: right;">130</p> <p>1 A. Yes.</p> <p>2 Q. And did you personally continue to prepare</p> <p>3 the 13-week forecasts after your conversation with</p> <p>4 Mr. Waterhouse?</p> <p>5 A. Yes.</p> <p>6 Q. And did those 13-week forecasts continue to</p> <p>7 include the payments that were due under the three term</p> <p>8 notes at the year end?</p> <p>9 A. Yes.</p> <p>10 Q. And that's information that you gave to</p> <p>11 Mr. Waterhouse; is that right?</p> <p>12 A. Right.</p> <p>13 Q. Mr. Rukavina elicited from you the fact that</p> <p>14 payments of principal hadn't been made on demand notes</p> <p>15 that were executed in favor of Mr. Dondero's</p> <p>16 affiliates.</p> <p>17 Do you recall that?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Was that a topic of conversation with</p> <p>20 PricewaterhouseCoopers at any time?</p> <p>21 A. Yes.</p> <p>22 Q. Can you tell me about that conversation?</p> <p>23 A. Sure. As part of our annual audit, the</p> <p>24 auditors would, you know, make sure that our</p> <p>25 receivables are collectible. And if they thought for</p>	<p style="text-align: right;">132</p> <p>1 obligations of the maker?</p> <p>2 A. No.</p> <p>3 Q. As the person responsible for Highland's</p> <p>4 audit, did anybody ever tell you at any time that any</p> <p>5 of the notes at issue should not have been signed?</p> <p>6 A. No.</p> <p>7 Q. As the person responsible for Highland's</p> <p>8 audit, did anybody ever tell you at any time that any</p> <p>9 of the notes at issue were signed by mistake?</p> <p>10 A. No.</p> <p>11 Q. Did anybody ever tell you at any time that --</p> <p>12 withdrawn.</p> <p>13 As the person responsible for Highland's</p> <p>14 audit, did anybody ever tell you at any time that</p> <p>15 Mr. Dondero didn't approve of any of the notes?</p> <p>16 A. No.</p> <p>17 Q. As the person responsible for Highland's</p> <p>18 audit, did anybody ever tell you at any time that</p> <p>19 the -- any of the notes at issue were subject to an</p> <p>20 oral agreement?</p> <p>21 A. No.</p> <p>22 Q. As the person responsible for Highland's</p> <p>23 audit, did anybody ever tell you at any time that any</p> <p>24 of the notes were amended?</p> <p>25 A. No.</p>

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<p style="text-align: right;">133</p> <p>1 Q. As the person responsible for Highland's</p> <p>2 audit, did anybody ever tell you at any time that any</p> <p>3 of the notes would be forgiven?</p> <p>4 A. No.</p> <p>5 Q. During your 15 years at Highland, has an</p> <p>6 intercompany loan ever been forgiven in whole or in</p> <p>7 part?</p> <p>8 A. No.</p> <p>9 Q. During your -- withdrawn.</p> <p>10 Can you recall any note that Highland ever</p> <p>11 held as the payee that was forgiven in whole or in part</p> <p>12 in the five years prior to bankruptcy, go back to 2014?</p> <p>13 A. No.</p> <p>14 Q. Is it your understanding as the person</p> <p>15 responsible for Highland's audit that the forgiveness</p> <p>16 of notes, if they were in a material amount, would have</p> <p>17 had to have been disclosed in the audited financial</p> <p>18 statements?</p> <p>19 A. Yes.</p> <p>20 Q. So is it fair to say that any evidence of the</p> <p>21 forgiveness of material amounts would have been</p> <p>22 disclosed in Highland's financial statements?</p> <p>23 A. Yes.</p> <p>24 MR. MORRIS: I have no further questions.</p> <p>25 MR. RUKAVINA: I have none.</p>	<p style="text-align: right;">135</p> <p>1 CERTIFICATE OF REPORTER</p> <p>2 I, BRANDON D. COMBS, a Certified Shorthand</p> <p>3 Reporter, hereby certify that the witness in the</p> <p>4 foregoing deposition was by me duly sworn to tell the</p> <p>5 truth, the whole truth, and nothing but the truth in the</p> <p>6 within-entitled cause;</p> <p>7 That said deposition was taken in shorthand by</p> <p>8 me, a disinterested person, at the time and place</p> <p>9 therein stated, and that the testimony of the said</p> <p>10 witness was thereafter reduced to typewriting, by</p> <p>11 computer, under my direction and supervision;</p> <p>12 That before completion of the deposition,</p> <p>13 review of the transcript was not requested. If</p> <p>14 requested, any changes made by the deponent (and</p> <p>15 provided to the reporter) during the period allowed are</p> <p>16 appended hereto.</p> <p>17 I further certify that I am not of counsel or</p> <p>18 attorney for either or any of the parties to the said</p> <p>19 deposition, nor in any way interested in the event of</p> <p>20 this cause, and that I am not related to any of the</p> <p>21 parties thereto.</p> <p>22 DATED: November 1, 2021</p> <p>23</p> <p>24 _____</p> <p>25 Brandon Combs, Certified Shorthand</p>
<p style="text-align: right;">134</p> <p>1 MR. AIGEN: None.</p> <p>2 MR. RUKAVINA: Okay. Thank you very much.</p> <p>3 (Whereupon, the deposition adjourned at</p> <p>4 1:19 P.M.)</p> <p>5 --oOo--</p> <p>6 I declare under penalty of perjury that the</p> <p>7 foregoing is true and correct. Subscribed at</p> <p>8 _____, Texas, this ____ day of</p> <p>9 _____, 2021.</p> <p>10</p> <p>11</p> <p>12 _____</p> <p>13 KRISTIN HENDRIX</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">136</p> <p>1 State of Texas</p> <p>2 Dickman Davenport, Inc. Cert 312</p> <p>3 4228 North Central Expressway</p> <p>4 Suite 101, Dallas, TX 75206</p> <p>5 (214) 855-5100 (800) 445-9548</p> <p>6 Email: info@dickmandavenport.com</p> <p>7 www.dickmandavenport.com</p> <p>8 My commission expires 1-31-23</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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EXHIBIT 195

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<p style="text-align: center;">1</p> <p>1 IN THE UNITED STATES BANKRUPTCY COURT</p> <p>2 FOR THE NORTHERN DISTRICT OF TEXAS</p> <p>3 DALLAS DIVISION</p> <p>4 --oOo--</p> <p>5</p> <p>6 HIGHLAND CAPITAL MANAGEMENT,)</p> <p>7 L.P.,)</p> <p>8)</p> <p>9 Plaintiff,)</p> <p>10)</p> <p>11 vs.) No. 21-03004-sgj</p> <p>12)</p> <p>13 HIGHLAND CAPITAL MANAGEMENT FUND)</p> <p>14 ADVISORS, L.P.,)</p> <p>15)</p> <p>16 Defendants.)</p> <p>17</p> <p>18 DEPOSITION OF</p> <p>19 DAVID KLOS</p> <p>20 October 27, 2021</p> <p>21</p> <p>22 DEPOSITION OF DAVID KLOS, produced as a</p> <p>23 witness, duly sworn by me via videoconference at the</p> <p>24 instance of the DEFENDANTS, was taken in the</p> <p>25 above-styled and numbered cause on October 27, 2021,</p> <p>from 2:30 P.M. to 5:14 P.M., before BRANDON D. COMBS,</p> <p>CSR, RPR, in and for the State of Texas, reported by</p> <p>computerized machine shorthand, at 500 North Akard</p> <p>Street, 38th Floor, Dallas, Texas.</p>	<p style="text-align: center;">3</p> <p>1 INDEX</p> <p>2 PAGE</p> <p>3 Examination by MR. RUKAVINA 4</p> <p>4 Examination by MR. AIGEN 95</p> <p>5 Examination by MR. MORRIS 109</p> <p>6 Further Examination by MR. RUKAVINA 127</p> <p>7</p> <p>8</p> <p>9</p> <p>10 (No exhibits marked.)</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: center;">2</p> <p>1 APPEARANCES</p> <p>2</p> <p>3 MUNSCH, HARDT, KOPF & HARR, PC, 500 North</p> <p>4 Akard Street, Suite 3800, Dallas, TX 75201, represented</p> <p>5 by DAVOR RUKAVINA, Attorney at Law, appeared via</p> <p>6 videoconference as counsel on behalf of the Defendants.</p> <p>7 Email: drukavina@munsch.com</p> <p>8</p> <p>9</p> <p>10 PACHULSKI, STANG, ZIEHL & JONES, 780 Third</p> <p>11 Avenue, 34th Floor, New York, NY 10017-2024, represented</p> <p>12 by JOHN A. MORRIS, Attorney at Law, appeared via</p> <p>13 videoconference as counsel on behalf of the Plaintiff.</p> <p>14 Email: jmorris@pszjlaw.com</p> <p>15</p> <p>16</p> <p>17 STINSON, LLP, 3102 Oak Lawn Avenue, Suite 777,</p> <p>18 Dallas, TX 75219, represented by MICHAEL AIGEN, Attorney</p> <p>19 at Law, appeared via videoconference as counsel on</p> <p>20 behalf of the Defendants Jim Dondero, HCMS and HCRE</p> <p>21 Partners.</p> <p>22 Email: michael.aigen@stinson.com</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: center;">4</p> <p>1 DAVID KLOS,</p> <p>2 having been first duly sworn, testified as follows:</p> <p>3 EXAMINATION</p> <p>4 Q. (BY MR. RUKAVINA) Sir, state your name for</p> <p>5 the record, please.</p> <p>6 A. David Klos.</p> <p>7 Q. K-l-o-s?</p> <p>8 A. K-l-o-s.</p> <p>9 Q. What's your date of birth?</p> <p>10 A. May 6, 1982.</p> <p>11 Q. And where do you live?</p> <p>12 A. I live in Dallas.</p> <p>13 Q. What's your educational background?</p> <p>14 A. Undergraduate and graduate degrees. I went</p> <p>15 to undergrad at Boston College, graduate school at SMU,</p> <p>16 with a degree in, Master's of Science in accounting and</p> <p>17 MBA from SMU.</p> <p>18 Q. Do you hold any professional licenses?</p> <p>19 A. CPA in the state of Texas and, I don't know</p> <p>20 if it's technically a license, but Series 27 from</p> <p>21 FINRA.</p> <p>22 Q. And when did you get your CPA license?</p> <p>23 A. I don't recall specifically, but it would</p> <p>24 have been probably in the '08, '09 time frame.</p> <p>25 Q. Is it current?</p>

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<p style="text-align: right;">5</p> <p>1 A. As far as I know.</p> <p>2 Q. Have you ever been disciplined or threatened</p> <p>3 with disciplinary proceedings?</p> <p>4 A. No.</p> <p>5 Q. And your relevant work experience, please,</p> <p>6 starting with college and afterwards?</p> <p>7 A. Sure. Out of grad school I started working</p> <p>8 at Deloitte in Boston. I worked at Deloitte for</p> <p>9 approximately three and a half years, between the</p> <p>10 Boston office and the Dallas office.</p> <p>11 And then I began working at Highland Capital</p> <p>12 Management in March of 2009 and I've been at Highland</p> <p>13 since then.</p> <p>14 Q. And when you joined Highland in March of</p> <p>15 2009, what was your title or your role at that time?</p> <p>16 A. My title, if I remember correctly, was</p> <p>17 valuation senior analyst. I'm not certain if that was</p> <p>18 exactly it, but it was something along those lines.</p> <p>19 Q. Was it in the valuation group?</p> <p>20 A. Yes.</p> <p>21 Q. And then give me your -- today you're the CFO</p> <p>22 of Highland; correct?</p> <p>23 A. Correct.</p> <p>24 Q. So give me the progression from valuation</p> <p>25 analyst to CFO with, to the best of your recollection,</p>	<p style="text-align: right;">7</p> <p>1 There were a few title changes in between</p> <p>2 there. I think at one point I was manager, at one</p> <p>3 point I was senior manager, at one point I was</p> <p>4 assistant controller and at one point I was controller.</p> <p>5 I can't remember the exact times of all of</p> <p>6 those break points.</p> <p>7 Q. Let me pause you. When you were assistant</p> <p>8 controller, who was the controller?</p> <p>9 A. There was quite a bit of time where I was</p> <p>10 assistant controller and we didn't have a controller.</p> <p>11 I couldn't tell you the exact time frame, but there was</p> <p>12 definitely an extended time frame.</p> <p>13 And then in April of 2020, our existing chief</p> <p>14 accounting officer left and I assumed his</p> <p>15 responsibilities at that time.</p> <p>16 Q. Let me pause you. That's a new term for me.</p> <p>17 Chief accounting officer?</p> <p>18 A. Uh-huh.</p> <p>19 Q. Who was that person?</p> <p>20 A. The person that left?</p> <p>21 Q. The person that was the chief accounting</p> <p>22 officer until April 2020.</p> <p>23 A. Cliff Stoops.</p> <p>24 Q. And do you have any idea or knowledge whether</p> <p>25 at Highland that was like an officer-level position?</p>
<p style="text-align: right;">6</p> <p>1 the approximate year that you were promoted, et cetera?</p> <p>2 A. Sure. I was in the valuation role from</p> <p>3 basically March of 2009 to end of 2009.</p> <p>4 I was then brought over to what we call the</p> <p>5 corporate accounting team, so doing the accounting for</p> <p>6 Highland Capital Management, LP and of the other</p> <p>7 advisor-type entities, where I was primarily focused on</p> <p>8 budgeting and forecasting, credit facility compliance.</p> <p>9 That took from roughly 2010 until I think</p> <p>10 middle of 2011, at which point I was moved over to the</p> <p>11 fund accounting group, so doing hedge fund accounting,</p> <p>12 which was a short role, really, for probably three or</p> <p>13 four months.</p> <p>14 At which point I was brought back to the</p> <p>15 corporate team and also put in charge of the valuation</p> <p>16 group. I held that role in some way, shape, or form</p> <p>17 more or less continuously for the next several years,</p> <p>18 although certainly my role evolved and changed.</p> <p>19 But in terms of the groups that I had</p> <p>20 oversight over, those were the groups. Like I said, my</p> <p>21 role definitely evolved over time from 2011.</p> <p>22 Q. So by 2017 what was your title?</p> <p>23 A. So, yeah, by that time, I was, I believe,</p> <p>24 controller. I might have still been assistant</p> <p>25 controller.</p>	<p style="text-align: right;">8</p> <p>1 A. It was not. It was more of a term of art, I</p> <p>2 would describe it. So it -- so, yeah --</p> <p>3 Q. To the best of your recollection, when did</p> <p>4 you become the controller at Highland Capital</p> <p>5 Management, LP?</p> <p>6 A. I couldn't pin down a specific date. Like I</p> <p>7 said, the responsibilities were very similar. I would</p> <p>8 guess the change from assistant controller to</p> <p>9 controller was probably in the, most likely in the '16,</p> <p>10 '17, maybe '18 time frame.</p> <p>11 Q. Can we agree that as of May 1, 2019, you were</p> <p>12 the controller at Highland?</p> <p>13 A. Yes.</p> <p>14 Q. So let's focus on that time frame, May 2019,</p> <p>15 and you're the controller. Who do you report to at</p> <p>16 Highland?</p> <p>17 A. Frank Waterhouse.</p> <p>18 Q. The CFO?</p> <p>19 A. Correct.</p> <p>20 Q. No one in between you and him?</p> <p>21 A. Correct.</p> <p>22 Q. So what -- explain to me the role between the</p> <p>23 chief accounting officer and the chief financial</p> <p>24 officer in that time frame, '19, '20?</p> <p>25 MR. MORRIS: Objection to the form of the</p>

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<p style="text-align: right;">9</p> <p>1 question.</p> <p>2 THE WITNESS: Very little. Like I said,</p> <p>3 chief accounting officer was more of a term of art.</p> <p>4 What that role actually had oversight of was our retail</p> <p>5 fund accounting, institutional fund accounting,</p> <p>6 operations, so loan settlement and treasury.</p> <p>7 And probably another department or two that</p> <p>8 I'm forgetting, but it did not have any oversight over</p> <p>9 the corporate accounting group.</p> <p>10 Q. (BY MR. RUKAVINA) And in May of 2019, as the</p> <p>11 controller, what were -- what was your role or what</p> <p>12 were your duties?</p> <p>13 A. In May of 2019 I was at that point still</p> <p>14 overseeing the valuation group. I was overseeing the</p> <p>15 corporate accounting group, which my primary direct</p> <p>16 report there was Kristin Hendrix, who really was the</p> <p>17 day-to-day person. But I certainly oversaw her.</p> <p>18 Q. By that you mean the person that answers to</p> <p>19 you?</p> <p>20 A. Correct. Sorry. If I flipped that, I</p> <p>21 apologize. So I was overseeing that group, which had,</p> <p>22 you know, fairly broad responsibilities.</p> <p>23 In terms of, you know, accounting for the</p> <p>24 Advisor, doing forecasts when they were called for,</p> <p>25 performing the audit every year, managing cash,</p>	<p style="text-align: right;">11</p> <p>1 A. Frank Waterhouse.</p> <p>2 Q. And were --</p> <p>3 A. I should clarify too, that the valuation team</p> <p>4 isn't ultimately responsible for the valuations</p> <p>5 themselves, but they do act in this liaison role.</p> <p>6 Q. Perhaps that's my confusion. Is there a</p> <p>7 separate group that handles just valuation?</p> <p>8 A. No.</p> <p>9 Q. Is there an outside consultancy that handled</p> <p>10 that in May of 2019?</p> <p>11 A. I don't know if I would call it consultancy,</p> <p>12 but there was a third-party valuation service provider</p> <p>13 that would do certain of the, call it illiquid, harder</p> <p>14 to value securities.</p> <p>15 Q. So would you say that you were pretty busy in</p> <p>16 April, May 2019?</p> <p>17 MR. MORRIS: Objection to the form of the</p> <p>18 question.</p> <p>19 THE WITNESS: I've been busy throughout my</p> <p>20 career.</p> <p>21 Q. (BY MR. RUKAVINA) In April, May, June 2019,</p> <p>22 how many hours a month do you estimate you worked for</p> <p>23 Highland?</p> <p>24 MR. MORRIS: Objection to the form of the</p> <p>25 question.</p>
<p style="text-align: right;">10</p> <p>1 processing payroll, things of that nature.</p> <p>2 And then at that time I was also put in</p> <p>3 charge of one of the public REITs that was launching at</p> <p>4 the time under the NexPoint flag. And getting that</p> <p>5 team started.</p> <p>6 Q. Did you mention that in May of 2019 you were</p> <p>7 still involved with the valuation group?</p> <p>8 A. I did.</p> <p>9 Q. Did you have a title at the valuation group?</p> <p>10 A. Nothing distinct from my overall controller</p> <p>11 title. These titles were often, like I said, terms of</p> <p>12 art, whether it was controller or chief accounting</p> <p>13 officer.</p> <p>14 Q. What did the valuation group at Highland do?</p> <p>15 A. Well, valuation group was really a liaison</p> <p>16 with both third-party pricing providers, pricing</p> <p>17 services, brokers on the street, front office, members</p> <p>18 at Highland.</p> <p>19 To, you know, to work on valuing the</p> <p>20 securities held across the platform, both for Highland</p> <p>21 HCMLP managed funds as well as affiliated managed</p> <p>22 funds.</p> <p>23 Q. So who did -- did you report to anyone at the</p> <p>24 valuation group? In other words, did it have its own</p> <p>25 separate hierarchy kind of?</p>	<p style="text-align: right;">12</p> <p>1 THE WITNESS: I don't remember. A</p> <p>2 significant number.</p> <p>3 Q. (BY MR. RUKAVINA) Certainly full-time?</p> <p>4 A. Absolutely.</p> <p>5 Q. Would you say that you were working more than</p> <p>6 200 hours a month in that time frame for Highland?</p> <p>7 A. I don't know how many hours. I should</p> <p>8 clarify, we're using Highland very liberally. When I</p> <p>9 say Highland, supporting the entire apparatus,</p> <p>10 platform. Significant number of hours at that time,</p> <p>11 and before and after.</p> <p>12 Q. And let's explore that a little bit. You</p> <p>13 mentioned one of the funds for NexPoint. I'd like to</p> <p>14 talk about NexPoint Advisors, LP, just NexPoint</p> <p>15 Advisors, LP.</p> <p>16 Did you ever have an official role or title</p> <p>17 with NexPoint Advisors, LP?</p> <p>18 A. Not that I can remember.</p> <p>19 Q. Do you know if you were ever the controller</p> <p>20 for that entity?</p> <p>21 A. I'm not certain. I'm not certain.</p> <p>22 Q. But I take it that pursuant to the shared</p> <p>23 services agreement you, as an employee of Highland,</p> <p>24 were providing services on behalf of NexPoint?</p> <p>25 MR. MORRIS: Objection to the form of the</p>

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<p style="text-align: right;">13</p> <p>1 question.</p> <p>2 THE WITNESS: I provided many of the same</p> <p>3 services for NexPoint Advisors that I provided for</p> <p>4 Highland, similar types of services.</p> <p>5 Q. (BY MR. RUKAVINA) And briefly about Highland</p> <p>6 Capital Management Fund Advisors, LP, HCMFA, did you</p> <p>7 ever have like an official title or role with that</p> <p>8 entity, to your knowledge?</p> <p>9 A. Again, not that I can remember.</p> <p>10 Q. Not to your knowledge, the controller ever of</p> <p>11 that entity?</p> <p>12 A. I'm not certain whether I was or not.</p> <p>13 Q. But you provided services to that entity as</p> <p>14 part of your role at Highland pursuant to shared</p> <p>15 services?</p> <p>16 A. Similar to NexPoint as I described.</p> <p>17 Q. When you were controller of Highland, was</p> <p>18 that an officer-level position at Highland?</p> <p>19 A. No.</p> <p>20 Q. When did you become the chief financial</p> <p>21 officer of Highland?</p> <p>22 A. Chief financial officer?</p> <p>23 Q. Uh-huh.</p> <p>24 A. 2021, March.</p> <p>25 Q. After Mr. Waterhouse was gone?</p>	<p style="text-align: right;">15</p> <p>1 Q. Do you have an expectation as to when the</p> <p>2 winding down and monetization of Highland and its</p> <p>3 assets will be complete?</p> <p>4 A. That's very hard to speculate, especially</p> <p>5 given the amount of litigation that's going on because</p> <p>6 I don't know when that's going to play out and that's a</p> <p>7 material asset.</p> <p>8 Q. Have you discussed with Mr. Seery how long</p> <p>9 that might be?</p> <p>10 A. Not that I can specifically remember.</p> <p>11 Q. Do you believe it will be at least probably</p> <p>12 two years, from today?</p> <p>13 A. I don't know.</p> <p>14 Q. This bonus compensation, does it or any</p> <p>15 amount of it depend on how well Highland or the</p> <p>16 claimant trust, how well they do vis-a-vis collecting</p> <p>17 money from creditors?</p> <p>18 A. Not that I can think of. I'd have to</p> <p>19 probably go back and look and understand the back-end</p> <p>20 piece to say definitively.</p> <p>21 Q. And back-end piece, does that mean whenever</p> <p>22 the winding down is completed?</p> <p>23 A. Yeah, like I said, I'm not exactly -- I'm not</p> <p>24 completely facile with the exact timing, if it's</p> <p>25 completed 100 percent or 80 percent, what kind of</p>
<p style="text-align: right;">14</p> <p>1 A. Yes.</p> <p>2 Q. And I'm going to ask you a little bit about</p> <p>3 your compensation today at Highland.</p> <p>4 You don't have to give me specific numbers</p> <p>5 unless I ask you, please, but I take it you have a base</p> <p>6 compensation?</p> <p>7 A. Yes, I have a base.</p> <p>8 Q. Do you have any bonus structure compensation?</p> <p>9 A. Yes, I have a bonus.</p> <p>10 Q. And what is that bonus number or whether it's</p> <p>11 paid out based upon or contingent upon?</p> <p>12 MR. MORRIS: Objection to the form of the</p> <p>13 question.</p> <p>14 THE WITNESS: As I understand, it's based on</p> <p>15 my offer letter.</p> <p>16 Q. (BY MR. RUKAVINA) On your what?</p> <p>17 A. My letter for extending an offer.</p> <p>18 Q. Tell me, what is your -- without having to</p> <p>19 use express numbers, what is your bonus compensation?</p> <p>20 When is it paid, et cetera?</p> <p>21 A. Yeah, so it's not too dissimilar from the</p> <p>22 prior Highland plan that has semiannual installments</p> <p>23 payable. And then there's a, kind of an end of plan</p> <p>24 bonus when -- I don't remember the specifics on exactly</p> <p>25 what triggers that, but it's back-ended in the plan.</p>	<p style="text-align: right;">16</p> <p>1 qualitative considerations go into that. But</p> <p>2 substantially completed.</p> <p>3 Q. Sitting here today, do you think or believe</p> <p>4 that any portion of your compensation over the next</p> <p>5 however long it takes to wind down Highland depends on</p> <p>6 how much Highland recovers from the litigation</p> <p>7 regarding promissory notes?</p> <p>8 A. I really take exception to that question</p> <p>9 because the insinuation is that it's going to somehow</p> <p>10 change my answers here, and it's absolutely not.</p> <p>11 How litigation, it may or may not affect my</p> <p>12 ultimate compensation, but that's not going to affect</p> <p>13 one iota of the answers I give you today or at any</p> <p>14 time, whether I'm on or off the record.</p> <p>15 Q. Fair enough. So you're going to testify</p> <p>16 today truthfully regardless of your compensation. I</p> <p>17 got you; right? Correct?</p> <p>18 A. I didn't follow what you just asked me.</p> <p>19 Q. You're going to testify today truthfully</p> <p>20 regardless of how these events may or may not affect</p> <p>21 your compensation; right?</p> <p>22 A. It's such a loaded question I can't even</p> <p>23 begin to answer that.</p> <p>24 Q. So sitting here today -- I want to ask you</p> <p>25 the same question I did before, and your answer to me</p>

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<p style="text-align: right;">17</p> <p>1 was that you took exception to the insinuation. Now</p> <p>2 I'd like you to answer my question.</p> <p>3 Which is, sitting here today, do you believe</p> <p>4 that any part of your compensation in the future,</p> <p>5 however long it takes to wind down Highland, is going</p> <p>6 to depend on how well Highland does in these</p> <p>7 litigations concerning the notes?</p> <p>8 A. I believe my ultimate compensation will</p> <p>9 depend on how long this process takes, which I don't</p> <p>10 know, and ultimate recoveries to trust beneficiaries</p> <p>11 under the plan.</p> <p>12 And so I do expect that it will vary, but I</p> <p>13 would reiterate my earlier comment.</p> <p>14 Q. So sitting here today, you understand that if</p> <p>15 the trust beneficiaries recover more, then you might be</p> <p>16 compensated more?</p> <p>17 A. That's possible.</p> <p>18 Q. Well, sir, I'm not trying to be a smart ass,</p> <p>19 but --</p> <p>20 MR. MORRIS: Actually, you're coming awfully</p> <p>21 close, just to be clear, so be careful, because I'm</p> <p>22 offended as well. But continue.</p> <p>23 MR. RUKAVINA: I'm entitled to ask the man</p> <p>24 about his compensation.</p> <p>25 MR. MORRIS: Right. And your clients have</p>	<p style="text-align: right;">19</p> <p>1 A. Not in any substance.</p> <p>2 Q. And when do you recall you might have had</p> <p>3 those discussions with her?</p> <p>4 A. I'm not even sure.</p> <p>5 Q. Would it have been recently or like 9,</p> <p>6 10 months ago?</p> <p>7 A. No, it would have been recently.</p> <p>8 Q. And with Mr. Seery, when did you have a</p> <p>9 general conversation with Mr. Seery?</p> <p>10 A. I've had, you know, one or more general</p> <p>11 conversations with Mr. Seery. It's my understanding</p> <p>12 that he was the 30(b)(6) witness, and he had questions</p> <p>13 in preparation for his role in that.</p> <p>14 Q. So that would have been before last Thursday</p> <p>15 that you talked to him? I'll represent to you that</p> <p>16 that's when his deposition was.</p> <p>17 A. Yeah, if I'm accepting that representation,</p> <p>18 yes, prior to.</p> <p>19 Q. Other than that conversation with respect to</p> <p>20 him preparing for the 30(b)(6), did you have a</p> <p>21 discussion with him about this litigation as it might</p> <p>22 relate to your deposition?</p> <p>23 A. I don't believe so in terms of relating to</p> <p>24 this deposition. We've talked at length about the</p> <p>25 notes more generally.</p>
<p style="text-align: right;">18</p> <p>1 \$75 million, hard dollars at stake in this litigation,</p> <p>2 so we should never believe anything that he says? Is</p> <p>3 that where we are now?</p> <p>4 Q. (BY MR. RUKAVINA) Sir, again, what is your</p> <p>5 bonus compensation as it relates to how well the</p> <p>6 claimant trust does? Do you remember or not?</p> <p>7 A. I don't know that that's even something that</p> <p>8 I could know at this point.</p> <p>9 Q. In preparing for this deposition, I take it</p> <p>10 you spoke to legal counsel, and I'm not entitled to</p> <p>11 know that and I'm not asking that.</p> <p>12 But did you talk to anyone else?</p> <p>13 A. I've spoken in general terms to Mr. Seery.</p> <p>14 Q. Okay. Anyone else?</p> <p>15 A. I've spoken, again in general terms, to</p> <p>16 Kristin Hendrix.</p> <p>17 Q. Anyone else?</p> <p>18 A. Not that I can think of.</p> <p>19 Q. Now, I understand you spoke to Ms. Hendrix</p> <p>20 when legal counsel was present; right?</p> <p>21 A. Yes.</p> <p>22 Q. So let's exclude that conversation.</p> <p>23 Did you have any conversations with</p> <p>24 Ms. Hendrix regarding this deposition or this</p> <p>25 litigation at which counsel was not present?</p>	<p style="text-align: right;">20</p> <p>1 Q. And we'll go through that I'm sure.</p> <p>2 So other than the conversations with</p> <p>3 Ms. Hendrix and Mr. Seery and, of course, with counsel</p> <p>4 that I'm not entitled to know about, did you discuss</p> <p>5 this deposition or what you might be asked today with</p> <p>6 anyone else?</p> <p>7 A. No.</p> <p>8 Q. Okay. Did you read all or any portions of</p> <p>9 the deposition of Frank Waterhouse?</p> <p>10 A. Certainly didn't read all of it. I have a</p> <p>11 general understanding of the topics that were -- that's</p> <p>12 a bad way to frame it.</p> <p>13 I have a general understanding of a few</p> <p>14 points that were covered in his deposition.</p> <p>15 Q. Were you provided -- were you provided the</p> <p>16 exact pages of any of his deposition?</p> <p>17 MR. MORRIS: Objection. Direct him not to</p> <p>18 answer.</p> <p>19 MR. RUKAVINA: You're going to direct him not</p> <p>20 to answer whether he read --</p> <p>21 MR. MORRIS: If you're asking him whether I</p> <p>22 directed him to particular --</p> <p>23 MR. RUKAVINA: I didn't ask that.</p> <p>24 MR. MORRIS: Rephrase your question.</p> <p>25 Q. (BY MR. RUKAVINA) Did you read any pages</p>

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<p style="text-align: right;">21</p> <p>1 from Mr. Waterhouse's deposition?</p> <p>2 MR. MORRIS: Objection. Asked and answered.</p> <p>3 You can answer again.</p> <p>4 THE WITNESS: I don't recall -- I don't</p> <p>5 recall reading it.</p> <p>6 Q. (BY MR. RUKAVINA) So were you provided a</p> <p>7 summary of his deposition?</p> <p>8 A. I have had discussions with Mr. Morris in</p> <p>9 preparation for this deposition.</p> <p>10 Q. That's fine. And we can stop there.</p> <p>11 Did you read or -- did you read the whole or</p> <p>12 any portion of Mr. Seery's deposition?</p> <p>13 A. No, I don't believe I -- no, I don't believe</p> <p>14 so.</p> <p>15 Q. Is it the same answer, that whatever you</p> <p>16 discussed would have been through counsel?</p> <p>17 A. Yes.</p> <p>18 Q. Did you see any of the videotape of either</p> <p>19 Mr. Waterhouse's or Mr. Seery's deposition?</p> <p>20 A. No.</p> <p>21 Q. So let's talk about the NexPoint</p> <p>22 \$30.7 million note.</p> <p>23 You're familiar with that note; right?</p> <p>24 MR. MORRIS: Objection to the form of the</p> <p>25 question.</p>	<p style="text-align: right;">23</p> <p>1 was?</p> <p>2 A. Yeah, it was Lauren Thedford, who is Highland</p> <p>3 in-house counsel.</p> <p>4 Q. She's a lawyer?</p> <p>5 A. Yes.</p> <p>6 Q. Do you recall from that -- strike that.</p> <p>7 Did you know on or about May 31, 2017 what</p> <p>8 the purpose or reason behind Exhibit 13, this</p> <p>9 promissory note, was?</p> <p>10 MR. MORRIS: Objection to the form of the</p> <p>11 question.</p> <p>12 THE WITNESS: The purpose was to take</p> <p>13 existing notes, which I believe were exclusively demand</p> <p>14 notes, I'm not a hundred percent certain on that, and</p> <p>15 roll them into a single note that would have a 30-year</p> <p>16 amortization period.</p> <p>17 Q. (BY MR. RUKAVINA) Do you know why that was</p> <p>18 done?</p> <p>19 A. I believe it was done probably for a number</p> <p>20 of reasons, one of which was to ensure some level of</p> <p>21 cash flow back to Highland, when I say Highland,</p> <p>22 Highland Capital Management, LP, on an annual basis.</p> <p>23 Q. Was that a concern at Highland Capital</p> <p>24 Management, that it wasn't getting any level of cash</p> <p>25 flow back?</p>
<p style="text-align: right;">22</p> <p>1 THE WITNESS: Before I answer that, I'd like</p> <p>2 to see the note.</p> <p>3 Q. (BY MR. RUKAVINA) It's in here. I'm looking</p> <p>4 for the exhibit number. It's in here somewhere.</p> <p>5 A. Yes, I'm familiar with this note.</p> <p>6 Q. Are you familiar with anything having to do</p> <p>7 with the negotiation or execution of this note?</p> <p>8 MR. MORRIS: Objection to the form of the</p> <p>9 question.</p> <p>10 THE WITNESS: Can you repeat.</p> <p>11 Q. (BY MR. RUKAVINA) Yes. Let me rephrase it.</p> <p>12 Did you have anything to do, back on or about</p> <p>13 May 31, 2017, with the negotiation or execution of this</p> <p>14 promissory note?</p> <p>15 MR. MORRIS: Objection to the form of the</p> <p>16 question.</p> <p>17 THE WITNESS: Nothing with respect to the</p> <p>18 negotiation --</p> <p>19 Q. (BY MR. RUKAVINA) I'm sorry.</p> <p>20 A. In terms of the execution, I believe I</p> <p>21 coordinated with internal counsel, who drafted the</p> <p>22 note, and I can't remember -- I can't recall one way or</p> <p>23 the other if I assisted in actually physically</p> <p>24 receiving signatures. I just don't remember.</p> <p>25 Q. Do you remember who that internal counsel</p>	<p style="text-align: right;">24</p> <p>1 A. It wasn't a concern of mine. I don't know if</p> <p>2 it was a concern of others.</p> <p>3 Q. Do you recall whether any auditor ever raised</p> <p>4 that concern?</p> <p>5 A. The auditors did raise that in conjunction</p> <p>6 with the audit that was concluding around this time.</p> <p>7 So yes, they did raise it, you know, probably in the</p> <p>8 May of 2017 time frame.</p> <p>9 Q. Do you know who decided that it would be a</p> <p>10 30-year term note? By that I mean 30 years.</p> <p>11 A. Jim Dondero.</p> <p>12 Q. Do you know if he decided that in connection</p> <p>13 with discussions with anybody or, to your knowledge, he</p> <p>14 just decided?</p> <p>15 A. As far as I know he just decided it. I</p> <p>16 believe there was a draft at one point that was for</p> <p>17 20 years, and he wanted to do 30.</p> <p>18 Q. So this note is executed in May 31, 2017.</p> <p>19 Did you have any further role prior to, let's say,</p> <p>20 December 1, 2020 with respect to anything to do with</p> <p>21 this promissory note?</p> <p>22 A. Sorry, tell me the date again.</p> <p>23 Q. From execution of the note until December 1,</p> <p>24 2020?</p> <p>25 A. And the question was?</p>

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<p style="text-align: right;">25</p> <p>1 Q. Did you have any role in that time frame with 2 respect to this promissory note on behalf of Highland? 3 MR. MORRIS: Objection to the form of the 4 question. 5 THE WITNESS: I don't know how to answer 6 that, it's such an open-ended question. I just don't 7 know how to respond to that. 8 Q. (BY MR. RUKAVINA) If payments were made on 9 this note, would you have any duty to record or credit 10 those payments? 11 MR. MORRIS: Objection to the form of the 12 question. 13 THE WITNESS: I wouldn't have personally in 14 my role, but my team would have been involved in the 15 recording of those. 16 Q. (BY MR. RUKAVINA) And when payments were due 17 on this note, did you personally have any role with 18 respect to doing anything to facilitate those payments? 19 A. When payments were due did I have anything -- 20 yes. 21 Q. What was your role? 22 A. So my role, as part of the corporate team, 23 part of our role is managing cash at the various 24 entities. So I was involved in weekly cash meetings, 25 where things like upcoming, whether it's an obligation</p>	<p style="text-align: right;">27</p> <p>1 Capital Management or NexPoint Advisors as to a 2 decision as to whether any prepayments on this note 3 would ever be made? 4 MR. MORRIS: Objection to the form of the 5 question. 6 THE WITNESS: Can you repeat. 7 Q. (BY MR. RUKAVINA) Let's start from scratch. 8 Do you have any memory of any payments being 9 made on this note, Exhibit 13, prior to their scheduled 10 dates of payment? 11 A. There were payments on -- and to be clear, 12 we're talking about the original 30.7- NexPoint 13 promissory note? There were payments that I recall 14 happening throughout 2019 on this note. 15 Q. And we can look at Exhibit 14. 16 MR. MORRIS: What number? 17 MR. RUKAVINA: 14, 1-4. 18 Q. (BY MR. RUKAVINA) And those are only 19 numbered because Ms. Hendrix, they were used for her 20 deposition. 21 A. Sure. Just trying to keep these in order, I 22 apologize. Got it. 23 Q. Do you recognize Exhibit 14? 24 A. Generally. I can't say that I can verify 25 that this is completely accurate. But it looks</p>
<p style="text-align: right;">26</p> <p>1 or a receipt, would be put on people's radars. 2 And we would, in connection with the 30-year 3 notes such as this one from NexPoint, we would either 4 confer with Jim or -- certainly Jim. Also likely his 5 accountant. 6 In terms of teeing them up to make sure that 7 they were prepared from a cash flow statement to make 8 the payment. 9 Q. What do you mean by his accountant? 10 A. Melissa Schroth. 11 Q. What do you mean by his? That's a new name 12 to me. Who is Melissa Schroth? 13 A. I find it hard to believe that she's a new 14 name to you. But I think her title was executive 15 accountant, and she was the keeper of Jim's -- many of 16 Jim's trusts and personal entities. 17 Q. Was she a Highland employee? 18 A. She was. And when I say Highland, I should 19 be clear, Highland Capital Management, LP. 20 Q. So when you say Jim's accountant, she was 21 still a debtor employee, just that she handled 22 primarily Jim's personal matters? 23 A. She was still a Highland Capital Management, 24 LP employee but she did Jim's personal matters. 25 Q. Did you have any role at either Highland</p>	<p style="text-align: right;">28</p> <p>1 familiar to a loan amortization schedule. 2 Q. Would it have been maintained by Highland? 3 A. Yes. 4 Q. And I'll tell you that no one has yet to 5 authenticate this with a hundred percent precision, so 6 I'm not asking you to ratify these numbers, but let's 7 assume that they are what they are. 8 This does purport to show on the second page 9 a number of transfers in 2019, which goes along with 10 your recent answer. 11 Do you see those, sir? 12 A. I do. 13 Q. In particular, 750,000, then 1.3 million, 14 300,000, 2.1 million, 630,000, 1.3 million. 15 You see all those, sir? 16 A. Yes, I see every one. 17 Q. Do you have any memory, without going into 18 those transfers of those dates to the dollar, do you 19 have any memory that those transfers were made? 20 A. Yes. Again, not a specific recollection of 21 where I was at the time, but yes, I know that these 22 transfers were made. 23 Q. Do you know why they were made in those 24 amounts and on those dates? 25 A. No, not without speculating.</p>

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<p style="text-align: right;">29</p> <p>1 Q. What would be your speculation if you were to 2 speculate?</p> <p>3 A. My speculation would be that it would be for 4 liquidity needs at HCMLP, Highland Capital Management, 5 LP, needing liquidity to operate. Again, that's 6 speculation. I don't know for a fact that that's true, 7 but that's what I would assume.</p> <p>8 Q. Who would have made those decisions in 2019 9 to transfer those funds?</p> <p>10 MR. MORRIS: Objection to the form of the 11 question.</p> <p>12 THE WITNESS: Yeah, it would have been either 13 Frank or Jim. I can't say with certainty, but one of 14 the two. When I say Jim, I should be clear, 15 Mr. Dondero.</p> <p>16 Q. (BY MR. RUKAVINA) Between January and 17 July 2019, do you have any recollection that there was 18 any particular liquidity issue or need at Highland 19 Capital Management?</p> <p>20 A. Yeah, Highland was dealing with liquidity 21 problems throughout 2019. Maybe not every single day 22 of the year, but we were continuously needing to bridge 23 liquidity.</p> <p>24 Q. And you joined Highland in 2009. From that 25 point in time, 2009, through 2019, was there any</p>	<p style="text-align: right;">31</p> <p>1 them had been made and you executed them?</p> <p>2 A. Both, depending on the circumstances.</p> <p>3 Q. So sometimes you would be brought into a 4 discussion?</p> <p>5 A. Yes.</p> <p>6 Q. And can you think of any particular example?</p> <p>7 A. Of when I was brought into the discussion of 8 whether to transfer? I can't think of an individual 9 example but we met quite regularly with Jim on cash. 10 So to the extent that either he needed cash 11 on one of his entities, he might let us know that. Or 12 to the extent that Highland needed cash, we might let 13 him know that and ask for basically his assistance in 14 helping us to meet our own cash needs.</p> <p>15 Q. And did he usually find a way to facilitate 16 the cash need either at one of his entities or at 17 Highland?</p> <p>18 A. I suppose until October 16 of 2019.</p> <p>19 Q. Yes. Prior to bankruptcy, do you recall any 20 instance where one entity wasn't able to transfer funds 21 to another for liquidity purposes?</p> <p>22 A. I can't think of a specific situation. But 23 I'm sure there were situations where -- you know, cash 24 was always something that was being juggled, so I don't 25 know that necessarily liquidity could be met the same</p>
<p style="text-align: right;">30</p> <p>1 practice at the enterprise of those businesses to 2 transfer funds between each other on a basis of when 3 one needed it and one had it?</p> <p>4 A. Yes, that was a fairly, generally speaking, 5 that was a fairly common practice, of using different 6 entities within the overall structure to bridge 7 liquidity.</p> <p>8 Q. Would that have been Mr. Dondero who, in the 9 final analysis, would have made those decisions?</p> <p>10 A. Maybe not a hundred percent, but I'd say 11 the -- if not a hundred percent, certainly most.</p> <p>12 Q. And who else might have participated, 13 Mr. Waterhouse?</p> <p>14 A. Potentially Mr. Waterhouse. And the reason I 15 hedge on that a little bit is I don't think Frank would 16 have made any of these decisions on his own either. 17 But I may have heard them from Frank via Jim.</p> <p>18 Q. So in those same years, were you ever asked 19 by Mr. Dondero or Mr. Waterhouse as to whether funds 20 should be transferred from one entity to another for 21 liquidity purposes?</p> <p>22 A. Can you ask that again, please.</p> <p>23 Q. Yes. Trying to understand, were you part of 24 those discussions as to whether these transfers should 25 be made, or did you just learn that a decision to make</p>	<p style="text-align: right;">32</p> <p>1 day.</p> <p>2 But eventually we were able to manage through 3 those situations, you know, oftentimes through some of 4 these loans.</p> <p>5 Q. In instances that you may remember when 6 Highland Capital Management needed liquidity, do you 7 know how Mr. Dondero decided from which other entity to 8 transfer the cash?</p> <p>9 A. I can't step into his brain and think about 10 his decision-making process, but if I was going to 11 oversimplify it I would speculate that it would be 12 based on who has cash in that moment.</p> <p>13 Q. Would he ask you or someone on your team who 14 had cash?</p> <p>15 A. At times, depending on which entity we're 16 talking about. Because my team certainly didn't have 17 responsibility for every single entity in the 18 enterprise, but we did have responsibility for some.</p> <p>19 Q. And if your team -- so -- strike that.</p> <p>20 So over the general -- talking about 21 generally now, over those 10 years when there were 22 these intercompany transfers for liquidity purposes, 23 how were they booked by the debtor, by Highland Capital 24 Management?</p> <p>25 MR. MORRIS: Objection to the form of the</p>

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<p style="text-align: right;">33</p> <p>1 question.</p> <p>2 THE WITNESS: Help me on the direction. So</p> <p>3 this is money that Highland is receiving or money that</p> <p>4 Highland is sending?</p> <p>5 Q. (BY MR. RUKAVINA) Sending out.</p> <p>6 A. Sending out. So this is -- in the scenario</p> <p>7 that you're describing, this money that Highland is</p> <p>8 sending out to meet some other corporate obligor's</p> <p>9 liquidity needs?</p> <p>10 Q. Yes, sir.</p> <p>11 A. So those would be booked as a loan. I</p> <p>12 would -- I need to hedge a little bit because I'm not</p> <p>13 a hundred percent certain, but I would say if not</p> <p>14 exclusively via loans close to exclusively.</p> <p>15 Q. And would they -- strike that.</p> <p>16 Would they usually be papered up with a</p> <p>17 promissory note?</p> <p>18 A. Yes.</p> <p>19 Q. Now, why was that the general course during</p> <p>20 10 years? Was there a policy and procedure in place,</p> <p>21 or would Dondero say book it as a loan, or was that</p> <p>22 just the right thing to do from an accounting</p> <p>23 perspective?</p> <p>24 MR. MORRIS: Objection to the form of the</p> <p>25 question.</p>	<p style="text-align: right;">35</p> <p>1 Q. (BY MR. RUKAVINA) To your knowledge, was</p> <p>2 there any written policy or procedure in place at</p> <p>3 Highland Capital Management with respect to how</p> <p>4 transfers from Highland to an affiliated entity should</p> <p>5 be booked or treated?</p> <p>6 A. No written policy or procedure that I'm aware</p> <p>7 of.</p> <p>8 Q. Is it fair to say that by May 2019, the</p> <p>9 corporate accounting group had handled so many of these</p> <p>10 transfers that it believed that if Highland was</p> <p>11 transferring funds to another affiliated entity, it's</p> <p>12 probably a loan?</p> <p>13 MR. MORRIS: Objection to the form of the</p> <p>14 question.</p> <p>15 THE WITNESS: Yeah, I don't know that I can</p> <p>16 answer that in terms of the corporate accounting team.</p> <p>17 That just feels way too broad.</p> <p>18 It was certainly the practice that when</p> <p>19 somebody needed liquidity and it was appropriate from an</p> <p>20 accounting perspective, that's how it would be booked.</p> <p>21 And there was no reason to doubt that that was</p> <p>22 the appropriate way to do it, particularly with</p> <p>23 direction from either Frank or Jim.</p> <p>24 Q. (BY MR. RUKAVINA) Is it your testimony that</p> <p>25 in each instance that happened, that either Frank or</p>
<p style="text-align: right;">34</p> <p>1 THE WITNESS: At the end of the day it's at</p> <p>2 the direction of Jim Dondero, so I can't tell you</p> <p>3 exactly why he wanted it to be done that way. But that</p> <p>4 was certainly the practice of how it was done in those</p> <p>5 situations.</p> <p>6 Q. (BY MR. RUKAVINA) To your knowledge, did Jim</p> <p>7 Dondero ever tell you or anyone else that when Highland</p> <p>8 is transferring funds to one of his affiliated entities</p> <p>9 that it should always be booked as a loan?</p> <p>10 A. So remembering 10 years' worth of</p> <p>11 conversations, I can't remember a specific instance</p> <p>12 where he would have said, always book every single</p> <p>13 transaction I direct you to do as a loan. However,</p> <p>14 that was the practice.</p> <p>15 Q. Different question.</p> <p>16 Do you remember that in each instance, and</p> <p>17 again, that might be unfair over 10 years, but do you</p> <p>18 remember in each instance when Mr. Dondero said</p> <p>19 transfer money from Highland to this other entity for</p> <p>20 liquidity needs that he said book it as a loan?</p> <p>21 MR. MORRIS: Objection to the form of the</p> <p>22 question.</p> <p>23 THE WITNESS: I can't recall with any</p> <p>24 specificity what he may or may not have specifically</p> <p>25 said so long ago.</p>	<p style="text-align: right;">36</p> <p>1 Jim said, this is a loan, the "this" being the transfer</p> <p>2 from Highland to an affiliated entity for liquidity</p> <p>3 purposes?</p> <p>4 MR. MORRIS: Objection to the form of the</p> <p>5 question.</p> <p>6 THE WITNESS: I can't recall with that level</p> <p>7 of specificity if those words came out of Jim's mouth.</p> <p>8 But with 0 percent doubt in my mind, every single one</p> <p>9 of those loans was done with the authority of Jim or</p> <p>10 Frank, or both.</p> <p>11 Q. (BY MR. RUKAVINA) So going back to this</p> <p>12 Exhibit 14, now I'm going to ask you about these</p> <p>13 payments coming in.</p> <p>14 Assuming that these payments were actually</p> <p>15 made in 2019 --</p> <p>16 And I think, John, you sent me this morning,</p> <p>17 or maybe last night, some bank statements?</p> <p>18 MR. MORRIS: I actually sent all of the</p> <p>19 backup for all payments made, I think, under the notes</p> <p>20 at issue a week or two ago.</p> <p>21 Q. (BY MR. RUKAVINA) How would -- so assuming</p> <p>22 that these payments in 2019 that NexPoint made didn't</p> <p>23 technically have to be made at that point in time, how</p> <p>24 would Highland have booked these payments?</p> <p>25 A. So I can't tell the column headers, so you'll</p>

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<p style="text-align: right;">37</p> <p>1 have to excuse me if I flip them.</p> <p>2 Q. They'll be on the first page. Rip the page</p> <p>3 off if you need to.</p> <p>4 A. First one is interest, second one is</p> <p>5 principal. On the far right is the actual amount of</p> <p>6 the payment. So, for example, March 29, 750,000.</p> <p>7 And the -- the column that has the negative</p> <p>8 411,000 is the application of interest and the 338- is</p> <p>9 the application of principal.</p> <p>10 Q. So again, if Highland -- strike that.</p> <p>11 If NexPoint made a payment that was not</p> <p>12 technically due at that point in time, it would be</p> <p>13 recorded as payments on principal and interest?</p> <p>14 A. It would be recorded as it's reflected in the</p> <p>15 schedule. So there's an application of interest and an</p> <p>16 application of principal.</p> <p>17 Q. So based on your understanding and</p> <p>18 experience, if that payment wasn't due at that time,</p> <p>19 would it have been a prepayment by NexPoint?</p> <p>20 MR. MORRIS: Objection to the form of the</p> <p>21 question.</p> <p>22 THE WITNESS: Yeah, I'm not sure that it's a</p> <p>23 prepayment or not. It's certainly a payment. It's</p> <p>24 certainly voluntary. It's not spelled out under the</p> <p>25 schedule. I don't know that it's a per se, capital P,</p>	<p style="text-align: right;">39</p> <p>1 question.</p> <p>2 Q. (BY MR. RUKAVINA) And his objection is</p> <p>3 valid. And just to give you a little bit of a fine</p> <p>4 point, does someone look at the promissory note to</p> <p>5 decide that? Or is there some other rule or procedure</p> <p>6 that someone looks at?</p> <p>7 MR. MORRIS: Objection to the form of the</p> <p>8 question.</p> <p>9 THE WITNESS: So the person -- I don't know</p> <p>10 that I can specifically name a person because the role</p> <p>11 probably changed over time.</p> <p>12 But either our corporate accountant, or the</p> <p>13 corporate accountant's boss, which was Kristin Hendrix</p> <p>14 for years, would have been responsible for recording and</p> <p>15 tracking those payments.</p> <p>16 So some combination of the corporate</p> <p>17 accountant and Kristin would have applied those</p> <p>18 payments, and that rolls up through my and Frank's</p> <p>19 review ultimately.</p> <p>20 Q. (BY MR. RUKAVINA) So if I can round off this</p> <p>21 discussion, I think you told me a few minutes ago that</p> <p>22 in each instance that Highland was transferring money</p> <p>23 out to an affiliate.</p> <p>24 Whether or not you remember Dondero or</p> <p>25 Waterhouse saying it's a loan, it would have been a</p>
<p style="text-align: right;">38</p> <p>1 prepayment. I'm just not certain.</p> <p>2 Q. (BY MR. RUKAVINA) Well, maybe without</p> <p>3 respect to these specific transfers.</p> <p>4 Generally, generally, if one of the Dondero</p> <p>5 affiliates made a payment that wasn't scheduled, how</p> <p>6 would the debtor have accounted for that payment?</p> <p>7 A. It would have recorded the payment as a</p> <p>8 reduction to either or both outstanding accrued</p> <p>9 interest or principal.</p> <p>10 Q. You wouldn't call those prepayments?</p> <p>11 A. I don't know the definition of prepayment.</p> <p>12 It's a payment. It's off schedule, but I don't know</p> <p>13 whether it's a per se prepayment.</p> <p>14 Q. Would that be something in your experience</p> <p>15 that we would look at the promissory note to maybe</p> <p>16 determine?</p> <p>17 MR. MORRIS: Objection to the form of the</p> <p>18 question.</p> <p>19 THE WITNESS: I don't know.</p> <p>20 Q. (BY MR. RUKAVINA) Well, remember, I'm asking</p> <p>21 you the same question just in different ways.</p> <p>22 Who decides at the debtor, or how does the</p> <p>23 debtor decide, if an unscheduled payment is made, how</p> <p>24 to apply it?</p> <p>25 MR. MORRIS: Objection to the form of the</p>	<p style="text-align: right;">40</p> <p>1 loan because that's how it always was and it was always</p> <p>2 authorized. Generally correct?</p> <p>3 MR. MORRIS: Objection to the form of the</p> <p>4 question.</p> <p>5 THE WITNESS: There were a few "always" and</p> <p>6 "generally" in there. And like I said, when it came</p> <p>7 to liquidity needs, my recollection is that these would</p> <p>8 be handled via loans.</p> <p>9 Q. (BY MR. RUKAVINA) And in reverse, if a</p> <p>10 Dondero entity made a payment prior to a scheduled</p> <p>11 payment on a note, generally there would be credit</p> <p>12 against principal and/or interest provided on that</p> <p>13 note?</p> <p>14 MR. MORRIS: Objection to the form of the</p> <p>15 question.</p> <p>16 THE WITNESS: Generally speaking, yes, if the</p> <p>17 payment was for payment on the note.</p> <p>18 Q. (BY MR. RUKAVINA) Well, that goes back to my</p> <p>19 question.</p> <p>20 Do you know how these payments on Exhibit 14</p> <p>21 in 2019 were determined to be payments on these notes,</p> <p>22 as opposed to a transfer from NexPoint to Highland for</p> <p>23 some other reason?</p> <p>24 A. What other reason would it be, if I can be so</p> <p>25 bold.</p>

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<p style="text-align: right;">41</p> <p>1 Q. Can you think of any other reason in 2019?</p> <p>2 A. Well, Highland had -- Highland had shared</p> <p>3 services and intercompany agreements with NexPoint, at</p> <p>4 this time.</p> <p>5 But these were not payments that could</p> <p>6 possibly be confused with those payments. These are</p> <p>7 off cycle, they're larger amounts, and there's nothing</p> <p>8 that they could be other than payments against the</p> <p>9 loan.</p> <p>10 Q. So I asked you before, and I think you said</p> <p>11 that you were speculating with respect to these</p> <p>12 payments, that Highland needed money at that time.</p> <p>13 Do you recall in 2019 any discussions with</p> <p>14 anyone, Dondero or Waterhouse, to the effect that</p> <p>15 NexPoint has excess cash so maybe NexPoint should</p> <p>16 transfer some money to Highland?</p> <p>17 MR. MORRIS: Objection. Asked and answered.</p> <p>18 THE WITNESS: Do I still answer?</p> <p>19 Q. (BY MR. RUKAVINA) Yes.</p> <p>20 MR. MORRIS: Yes.</p> <p>21 THE WITNESS: And sorry, I got lost there.</p> <p>22 Q. (BY MR. RUKAVINA) Yes. So my predicate was</p> <p>23 you testified before that you were assuming that these</p> <p>24 payments were because of a cash need at Highland;</p> <p>25 right?</p>	<p style="text-align: right;">43</p> <p>1 THE WITNESS: Yeah, the premise of that,</p> <p>2 given that Mr. Dondero is in control of both sides,</p> <p>3 it's a faulty premise.</p> <p>4 Q. (BY MR. RUKAVINA) But you told me not that</p> <p>5 long ago that in these weekly cash meetings that it</p> <p>6 would be your team at Highland who would go to</p> <p>7 Mr. Dondero and say Highland has a liquidity issue.</p> <p>8 So wouldn't that liquidity issue have</p> <p>9 originated with the Highland team?</p> <p>10 A. Mr. Dondero is the president of Highland.</p> <p>11 He's the president of NexPoint. We're employees of</p> <p>12 Highland. We're also shared services providers for</p> <p>13 NexPoint.</p> <p>14 The waters are very muddy in terms of who is</p> <p>15 wearing what hat in that conversation.</p> <p>16 Q. But Mr. Dondero doesn't know that Highland</p> <p>17 has a liquidity issue unless someone from the corporate</p> <p>18 accounting group tells him, does he?</p> <p>19 MR. MORRIS: Objection to the form of the</p> <p>20 question. I hope that's not the case.</p> <p>21 THE WITNESS: He has the ability to know what</p> <p>22 our cash position is at any given time, at that time.</p> <p>23 Q. (BY MR. RUKAVINA) So why would you have</p> <p>24 these weekly cash meetings with Mr. Waterhouse and</p> <p>25 sometimes Mr. Dondero?</p>
<p style="text-align: right;">42</p> <p>1 A. Correct.</p> <p>2 Q. So with that predicate my question is, do you</p> <p>3 recall discussing with Dondero or Waterhouse or with</p> <p>4 anyone as to why NexPoint would be transferring money</p> <p>5 to Highland at that time?</p> <p>6 A. Yes, I would have had conversations with</p> <p>7 Mr. Dondero or Mr. Waterhouse.</p> <p>8 Q. And do you remember specifically in 2019 why</p> <p>9 these transfers were made from NexPoint as opposed to</p> <p>10 some other Dondero entity?</p> <p>11 A. Not with specificity, but certainly NexPoint</p> <p>12 was generating cash at that time, and had the ability</p> <p>13 to assist with Highland's liquidity.</p> <p>14 Q. So sitting here today, you've told me</p> <p>15 generally and logically that you have no specific</p> <p>16 memory why between January 2019 and August 2019, any of</p> <p>17 these payments on Exhibit 14 were made by NexPoint?</p> <p>18 A. I have no specific memory, but I would say</p> <p>19 with certainty that most or all of this was driven by</p> <p>20 Highland HCMLP liquidity needs.</p> <p>21 Q. And most or all of this would have been</p> <p>22 Highland in the first instance going to NexPoint and</p> <p>23 saying, hey, can you send us some cash?</p> <p>24 MR. MORRIS: Objection to the form of the</p> <p>25 question.</p>	<p style="text-align: right;">44</p> <p>1 A. So these were cash forecasts, looking at</p> <p>2 outlook. I can tell you almost without exception,</p> <p>3 maybe -- with maybe without exception, be speculating,</p> <p>4 but those forecasts would be showing negative numbers</p> <p>5 at Highland, virtually nonstop.</p> <p>6 And so it was important, my opinion, but it</p> <p>7 was probably important to Frank to make sure that he</p> <p>8 was getting in front of Jim to make sure that those</p> <p>9 needs were being addressed timely.</p> <p>10 Q. So I've asked that question. I want to ask</p> <p>11 you a different question.</p> <p>12 For any of these payments between</p> <p>13 January 2019 and August 2019 reflected on Exhibit 14,</p> <p>14 do you have any personal knowledge as to whether they</p> <p>15 were intended to be prepayments or not?</p> <p>16 MR. MORRIS: Objection to the form of the</p> <p>17 question.</p> <p>18 THE WITNESS: I don't know whether they were</p> <p>19 intended to be prepayments at that time.</p> <p>20 Q. (BY MR. RUKAVINA) Sitting here today, seeing</p> <p>21 this document as a CPA and as a sophisticated person,</p> <p>22 do you read this Exhibit 14 to indicate that those</p> <p>23 payments were booked as prepayments?</p> <p>24 MR. MORRIS: Objection to the form of the</p> <p>25 question.</p>

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<p style="text-align: right;">45</p> <p>1 THE WITNESS: Again, the term "prepayments"</p> <p>2 is the one I'm struggling with. I can ascertain that</p> <p>3 there are payments and they're off schedule. But I</p> <p>4 don't know that I can ascertain that they're</p> <p>5 prepayments.</p> <p>6 Q. (BY MR. RUKAVINA) Well, if a borrower makes</p> <p>7 a payment that's ahead of schedule, how would that</p> <p>8 generally be accounted for?</p> <p>9 MR. MORRIS: Objection to the form of the</p> <p>10 question.</p> <p>11 THE WITNESS: It would be accounted for as a</p> <p>12 reduction of principal or interest or some combination</p> <p>13 of the two.</p> <p>14 Q. (BY MR. RUKAVINA) Which would relieve the</p> <p>15 borrower of having to make that at some point in the</p> <p>16 future; right?</p> <p>17 MR. MORRIS: Objection to the form of the</p> <p>18 question.</p> <p>19 THE WITNESS: No. The borrower still owes</p> <p>20 the money. This is showing 23-point -- pick a date.</p> <p>21 May 31, 23.034-. That there's significant obligations</p> <p>22 that are still outstanding.</p> <p>23 Q. (BY MR. RUKAVINA) So on June 4, 2019 -- I'm</p> <p>24 sorry, on June 19, 2019, the borrower made a</p> <p>25 \$2.1 million payment. That's what this shows; correct?</p>	<p style="text-align: right;">47</p> <p>1 that the maker may pay outstanding accrued interest, or</p> <p>2 unpaid principal.</p> <p>3 Q. (BY MR. RUKAVINA) But my question is, as I</p> <p>4 understand accrued interest, it means interest that has</p> <p>5 already occurred or accrued as of the date, like</p> <p>6 today's date; right?</p> <p>7 A. Uh-huh.</p> <p>8 MR. MORRIS: Objection to the form of the</p> <p>9 question.</p> <p>10 Q. (BY MR. RUKAVINA) Do you agree with that?</p> <p>11 Do you agree with that? Accrued interest</p> <p>12 means interest that has already come due, that has</p> <p>13 actually happened because interest happens over time.</p> <p>14 A. Accrued interest --</p> <p>15 MR. MORRIS: Objection to the form of the</p> <p>16 question.</p> <p>17 Q. (BY MR. RUKAVINA) Why don't you start. Why</p> <p>18 don't you define for me accrued interest.</p> <p>19 A. Sure. Accrued interest would be outstanding</p> <p>20 and unpaid interest that -- sorry, it's hard to define</p> <p>21 it without using the term. But it's interest that's</p> <p>22 accumulated in respect of a principal amount through a</p> <p>23 given date.</p> <p>24 Q. So how do you prepay accrued interest?</p> <p>25 A. How do you prepay accrued interest. Again,</p>
<p style="text-align: right;">46</p> <p>1 A. I see that.</p> <p>2 Q. You're not saying that the borrower would</p> <p>3 ever have to make that same \$2.1 million payment again,</p> <p>4 are you?</p> <p>5 A. No. What I'm saying is, based on that 2.1-</p> <p>6 payment -- and this is reading this cold.</p> <p>7 But based on that 2.1- payment, 66,000 was</p> <p>8 applied to interest, which left zero accrued interest</p> <p>9 outstanding. 2.03- applied to principal, which left</p> <p>10 24.7- and change still outstanding.</p> <p>11 Q. Well, I'm going to ask you about the</p> <p>12 promissory note then, Exhibit 13, in particular</p> <p>13 Section 3, where it says prepayment allowed.</p> <p>14 And the first sentence says, may or -- pardon</p> <p>15 me, maker may prepay in whole or in part the unpaid</p> <p>16 principal or accrued interest of this note.</p> <p>17 Do you see that, sir?</p> <p>18 A. Yes, I see that.</p> <p>19 Q. In your experience, can someone prepay</p> <p>20 accrued interest?</p> <p>21 MR. MORRIS: Objection to the form of the</p> <p>22 question.</p> <p>23 THE WITNESS: The document reads, maker may</p> <p>24 prepay in whole or in part the unpaid principal or</p> <p>25 accrued interest of this note. So I read that to say</p>	<p style="text-align: right;">48</p> <p>1 that's a little bit of a mental jumble.</p> <p>2 Q. Exactly.</p> <p>3 A. Well, what I'm...</p> <p>4 Q. To me one pays accrued interest. But this</p> <p>5 note says you can prepay accrued interest. So I'm just</p> <p>6 seeing whether you as a CPA, CFO and controller for</p> <p>7 years agrees that one can prepay accrued interest?</p> <p>8 MR. MORRIS: Objection to the form of the</p> <p>9 question.</p> <p>10 THE WITNESS: Frankly, I don't know if it's</p> <p>11 possible. That's not how I'm seeing it applied here,</p> <p>12 based on the quick review of Exhibit 14.</p> <p>13 Q. (BY MR. RUKAVINA) Well, the next sentence</p> <p>14 says, any payments on this note shall be applied first</p> <p>15 to unpaid accrued interest hereon, and then to unpaid</p> <p>16 principal hereof.</p> <p>17 Do you see that, sir?</p> <p>18 A. I see that.</p> <p>19 Q. Do you have any understanding based either on</p> <p>20 your personal knowledge or in your expertise as a CPA</p> <p>21 and a CFO as to what that sentence means?</p> <p>22 MR. MORRIS: Objection to the form of the</p> <p>23 question.</p> <p>24 THE WITNESS: The way that I would read that</p> <p>25 would be that for a payment, for example, pick a date,</p>

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<p style="text-align: right;">49</p> <p>1 Exhibit 14 again, the \$2.1 million payment on or about 2 June 19. I see that a payment was made. 3 And it was -- it appears that there was 4 accrued and unpaid interest at that time of 66,000. And 5 so the first 66,000 was applied to outstanding accrued 6 interest, to bring the balance to zero. 7 And the difference between that 66,000 and the 8 2.1 million was applied to principal. 9 Q. (BY MR. RUKAVINA) Do you believe, whether 10 from personal knowledge from this note, Exhibit 13, or 11 your experience at Highland or as a CPA, that one can 12 say that interest, accrued interest will be due on a 13 future date, it will accrue by that date, but I'm going 14 to pay it earlier as of that date? 15 MR. MORRIS: Objection to the form of the 16 question. 17 THE WITNESS: If I can rephrase back to you 18 just so I make sure I'm understanding the question. 19 You're saying could someone say, I would like to prepay 20 interest into the future. It hasn't accrued yet, but 21 it will be accrued by end of year. 22 And I would like to be prepaid effectively 23 with respect to that interest, and then have the 24 remainder used to pay down principal. 25 The question is, can someone do that?</p>	<p style="text-align: right;">51</p> <p>1 believe that has been done in a specific circumstance. 2 Q. So at least at Highland, you would believe 3 that that phrase, prepaying accrued interest, had some 4 established meaning at Highland? 5 MR. MORRIS: Objection to the form of the 6 question. 7 THE WITNESS: No, I don't agree with that. 8 Q. (BY MR. RUKAVINA) Okay. You understand, of 9 course, that it's Highland's position that with respect 10 to this note, a payment was due on December 31 of 2020 11 that wasn't made; correct? 12 A. Yes, it's my understanding -- if I can state 13 it back just so I make sure I'm getting it correctly. 14 It's my understanding that there was a payment due on 15 December 31, 2020, that wasn't made timely, yes. 16 Q. Okay. Do you know why that payment wasn't 17 made timely? 18 A. By recollection, because Mr. Dondero had 19 directed people not to process payments from Highland 20 affiliates to Highland. 21 Q. When did you learn of that? 22 A. Early December 2020. 23 Q. How did you learn of that? 24 A. I don't specifically remember the 25 conversation, but I know I had conversations with both</p>
<p style="text-align: right;">50</p> <p>1 Q. (BY MR. RUKAVINA) Yes. 2 MR. MORRIS: I object to the question. 3 THE WITNESS: I suppose it's possible, but 4 that certainly wasn't the practice if that makes sense. 5 Q. (BY MR. RUKAVINA) That does make sense. I'm 6 still struggling, and again, I'm not trying to be a 7 smart aleck. I'm still struggling with the first 8 sentence of paragraph 3, that maker may prepay accrued 9 interest. 10 And it sounds like to me like you don't 11 necessarily have a definitive answer as to what that 12 might have meant either. 13 MR. MORRIS: Objection to the form of the 14 question. 15 THE WITNESS: I think the document speaks for 16 itself in that sentence. 17 Q. (BY MR. RUKAVINA) But have you seen 18 something like this, to your recollection, in other 19 Highland promissory notes? 20 A. Something like what? 21 Q. Prepaying accrued interest. 22 A. Yes, I have seen that. 23 Q. What's your memory? Where have you seen 24 that? 25 A. I can't remember a specific note, but I</p>	<p style="text-align: right;">52</p> <p>1 Kristin and Frank. I can't remember if those were 2 individual or collective, but we understood that to be 3 the marching orders. 4 Q. Did you hear Mr. Dondero say anything like 5 that? 6 A. I did not. 7 Q. Did Mr. Waterhouse tell you that Mr. Dondero 8 said something like that to him? 9 A. Yes. 10 Q. Okay. Separately, do you remember whether 11 Ms. Hendrix told you that Mr. Waterhouse told her that, 12 or would it have been kind of at the same meeting? 13 A. I don't remember specifically. It would have 14 been all around the same time. 15 Q. And to the best of your recollection, what 16 words -- strike that. 17 To the best of your recollection, did 18 Mr. Waterhouse include a reference to promissory notes 19 and the Advisors when he said that Dondero told him not 20 to make payments? 21 MR. MORRIS: Objection to the form of the 22 question. 23 THE WITNESS: I don't remember the specific 24 words that Mr. Waterhouse used. My clear impression 25 was that it was a very global instruction.</p>

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<p style="text-align: right;">53</p> <p>1 And I should clarify also that, you know, at 2 this time, I think as we covered in my background. 3 At this point I had assumed the chief 4 accounting officer role, so I wasn't necessarily in 5 the -- in as much of the chain of command as I had been 6 previously to taking that role, where that sort of thing 7 might have come from Frank, to me, to Kristin. 8 By this time, Frank and Kristin were 9 communicating and I was sometimes in the loop, sometimes 10 not. 11 Q. (BY MR. RUKAVINA) Did Mr. Waterhouse tell 12 you why Dondero had told him that? 13 A. I don't remember with any specificity. 14 However, my perception at the time was that at this 15 time the relationship between Mr. Dondero and Mr. Seery 16 was hopelessly broken, and that this was Jim Dondero, 17 you know, gearing up for a fight in the future. 18 Q. Prior to December of 2020, had you prepared a 19 report showing potential overpayments that NexPoint and 20 HCMFA had made on account of shared services and 21 payroll reimbursement? 22 MR. MORRIS: Objection to the form of the 23 question. 24 You can answer. 25 THE WITNESS: I know the analysis that you're</p>	<p style="text-align: right;">55</p> <p>1 analysis, right or wrong, suggested that the Advisors 2 had made large overpayments? 3 MR. MORRIS: Objection to the form of the 4 question. 5 THE WITNESS: No, that's incorrect. 6 Q. (BY MR. RUKAVINA) Why is that incorrect? 7 A. Because by recollection, to the best of my 8 recollection, that analysis didn't occur until after 9 Dondero had told Frank no more payments. 10 Q. Is that the only reason why you might suspect 11 that what I just said was incorrect? 12 MR. MORRIS: Objection to the form of the 13 question. 14 THE WITNESS: Yeah, I don't know how to 15 answer that. 16 Q. (BY MR. RUKAVINA) I'm going back, when I 17 asked you, did Waterhouse tell you why Dondero gave the 18 direction, you said no. 19 MR. MORRIS: Objection to the form of the 20 question. 21 THE WITNESS: Sorry, I'm not sure. If I 22 could have the question asked again, I'd be happy to 23 answer. 24 Q. (BY MR. RUKAVINA) I'll ask it again. 25 Mr. Waterhouse tells you that Mr. Dondero</p>
<p style="text-align: right;">54</p> <p>1 talking about. I would not characterize it the way 2 that you characterized it. 3 Q. (BY MR. RUKAVINA) And we'll talk about this 4 more in November, so I really don't want to go into any 5 detail, unless you feel the need to. 6 But, so you did not prepare that analysis? 7 MR. MORRIS: Objection to the form of the 8 question. 9 THE WITNESS: I prepared an analysis that 10 differed from how you described it. 11 Q. (BY MR. RUKAVINA) How would you describe it, 12 in a nutshell? 13 A. I would describe it as I was asked to refresh 14 a spreadsheet using certain assumptions, based on the 15 direction of Frank Waterhouse, and I updated and I sent 16 him an email. 17 Q. Do you have any understanding that that 18 analysis was then shared with Mr. Dondero by 19 Mr. Waterhouse? 20 A. I know that now. I didn't know that at the 21 time. 22 Q. Do you have any understanding -- strike that. 23 Did you have any understanding that as of 24 early December 2020 the reason why Mr. Dondero said 25 what he said to Mr. Waterhouse was because that</p>	<p style="text-align: right;">56</p> <p>1 basically said no more payments; right? 2 A. Yes. 3 Q. And, but he did not tell you why Mr. Dondero 4 said that? 5 A. Not that I can recall. 6 Q. So he might have? 7 A. He might have. I don't specifically 8 remember. 9 Q. Do you recall asking him or anyone else why 10 Dondero would have said that? 11 MR. MORRIS: Objection. Asked and answered. 12 THE WITNESS: I don't recall specifically 13 asking. 14 Q. (BY MR. RUKAVINA) Do you recall telling 15 Mr. Seery that Dondero said anything like that? 16 A. At what point in time? 17 Q. Prior to December 31, 2020. 18 A. No, I did not. I did not say that to 19 Mr. Seery. 20 Q. In your mind was there any present 21 understanding or concern that NexPoint therefore 22 wouldn't make a scheduled December 31, 2020, payment? 23 A. Was there any concern that they wouldn't? 24 Q. Yeah. 25 A. I would never use the word "concern." At</p>

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<p style="text-align: right;">57</p> <p>1 that point I wasn't even on the team anymore, so I hate</p> <p>2 to say it's other people's problem, but I had my hands</p> <p>3 full with plenty of other things. It wasn't something</p> <p>4 I was thinking about.</p> <p>5 Q. Do you remember here today that prior to</p> <p>6 December 31, 2020, you believed that NexPoint would not</p> <p>7 make the scheduled payment?</p> <p>8 MR. MORRIS: Objection to the form of the</p> <p>9 question.</p> <p>10 THE WITNESS: I had no idea whether NexPoint</p> <p>11 was going to make the payment.</p> <p>12 Q. (BY MR. RUKAVINA) Were you asked prior to</p> <p>13 December 31, 2020 by Mr. Seery or anyone else as to</p> <p>14 whether NexPoint was going to make that payment?</p> <p>15 A. Was I asked by Mr. Seery? Not that I can</p> <p>16 remember.</p> <p>17 Q. Prior to December 31, 2020, do you recall any</p> <p>18 discussion with Mr. Seery about the NexPoint note?</p> <p>19 MR. MORRIS: I'm sorry, can I have the</p> <p>20 question again.</p> <p>21 Q. (BY MR. RUKAVINA) Prior to December 31,</p> <p>22 2020, do you recall any discussion that you had with</p> <p>23 Mr. Seery about this NexPoint note?</p> <p>24 A. Not that I can remember. If there was, it</p> <p>25 would have been in a cash meeting, but I don't remember</p>	<p style="text-align: right;">59</p> <p>1 and change payment?</p> <p>2 A. Yeah, I'm aware that that payment happened.</p> <p>3 Q. When did you become aware of that payment?</p> <p>4 A. I think after it happened.</p> <p>5 Q. Can you tell us, was it days, weeks, months</p> <p>6 later?</p> <p>7 A. It was that day. And if I can expand, I</p> <p>8 recall getting an email, seeing a large inflow to</p> <p>9 Highland, to MLP because I was on an email distribution</p> <p>10 list that had those payments.</p> <p>11 And I think I emailed or called Kristin and</p> <p>12 asked her, is this the NexPoint note, because it was a</p> <p>13 large amount of money. And she said yes.</p> <p>14 Q. Did she tell you anything more about that</p> <p>15 payment, when it had been made, why, who authorized it?</p> <p>16 A. I had that information of when it had been</p> <p>17 sent. I had a wire confirm.</p> <p>18 Q. Only important thing to you is where did that</p> <p>19 money come from?</p> <p>20 A. It wasn't important to me. It was more</p> <p>21 curiosity.</p> <p>22 Q. Did you have any discussions with anyone on</p> <p>23 or about that time, January 14, 2021, as to why</p> <p>24 NexPoint made that payment?</p> <p>25 A. Not that I can remember.</p>
<p style="text-align: right;">58</p> <p>1 at all.</p> <p>2 Q. So it might have been some detail as part of</p> <p>3 a larger discussion, but you don't remember any</p> <p>4 specific discussion just around this note?</p> <p>5 A. No.</p> <p>6 Q. When did you learn or how did you learn that</p> <p>7 the December 31 payment had not been made?</p> <p>8 A. I'm not sure, but certainly after</p> <p>9 December 31.</p> <p>10 Q. Do you recall if it was before or after</p> <p>11 January 7?</p> <p>12 A. I think it was after.</p> <p>13 Q. The default letter from Highland is in here,</p> <p>14 if you need to see it. I'm just telling you it's the</p> <p>15 January 7.</p> <p>16 Do you recall having any role with respect to</p> <p>17 drafting the default letter that went out to NexPoint</p> <p>18 after the failed payment?</p> <p>19 A. No, none that I can remember.</p> <p>20 Q. How do you recall learning that the note had</p> <p>21 been called by Highland?</p> <p>22 A. I honestly don't remember. I think after the</p> <p>23 fact. I couldn't tell you how far after the fact.</p> <p>24 Q. Are you aware that on or about July -- I'm</p> <p>25 sorry, January 14, 2021 NexPoint made a \$1.4 million</p>	<p style="text-align: right;">60</p> <p>1 Q. Did you have any discussion with anybody on</p> <p>2 or about that time, January 14, 2021, as to how HCMLP</p> <p>3 should account for that payment?</p> <p>4 A. No.</p> <p>5 Q. Did you have any discussion with Mr. Seery at</p> <p>6 all about whether that payment should or shouldn't</p> <p>7 reinstate the note?</p> <p>8 A. No discussion that I can remember.</p> <p>9 Q. Is it fair to say that any of those</p> <p>10 considerations would have been at that point in time</p> <p>11 above your paygrade?</p> <p>12 MR. MORRIS: Objection to the form of the</p> <p>13 question.</p> <p>14 THE WITNESS: Yeah, paygrade, I don't know</p> <p>15 how to respond to that. Like I said before, I wasn't</p> <p>16 on the team at that point. I wouldn't have been</p> <p>17 involved in that determination regardless of my</p> <p>18 compensation.</p> <p>19 Q. (BY MR. RUKAVINA) So you know and you</p> <p>20 remember that in early December 2020 Frank Waterhouse</p> <p>21 told you that Dondero had directed no more payments by</p> <p>22 the Advisors. And you know that a payment was made on</p> <p>23 January 14.</p> <p>24 And that's pretty much the extent of your</p> <p>25 knowledge about the missed December 31 payment?</p>

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<p style="text-align: right;">61</p> <p>1 MR. MORRIS: Objection to the form of the 2 question. 3 THE WITNESS: Yeah, it's a very broad 4 question. In general terms, yes. 5 Q. (BY MR. RUKAVINA) Well, I'm not asking what 6 you learned since then. 7 I'm asking that as of, let's say, January 15, 8 2021 that would have been the extent of what you would 9 have known? 10 A. Correct. And if I can just restate and make 11 sure I understand what I'm saying. 12 It would have been my understanding that we 13 had had an instruction -- when I say "we," Kristin and 14 Frank and by default the whole corporate team -- not to 15 make payments from these affiliated entities. 16 To my knowledge, none of those payments had 17 occurred since that point. And then on or about 18 January 14, such a payment was made and I found out 19 about that by seeing a wire confirm. 20 Q. Well, you mentioned a couple times that you, 21 in December 2020, you weren't part of that group 22 anymore. So do you have any understanding as to why 23 Mr. Waterhouse would have told you in particular, you 24 being Mr. Klos, about that instruction from Dondero? 25 A. Sure. I still was participating in cash</p>	<p style="text-align: right;">63</p> <p>1 Q. Do you remember any discussion at that 2 approximate point in time for your cash meetings or 3 anything else as to whether NexPoint had made any 4 prepayments on the promissory note? 5 MR. MORRIS: Objection to the form of the 6 question. 7 THE WITNESS: Yeah, it's very hard to -- by 8 the way, I've said yeah a few times. I want to make 9 clear that that's just -- 10 Q. (BY MR. RUKAVINA) That's not a yes? 11 A. I apologize for that. 12 Q. Understood. Yeah means, it's not a yes. 13 MR. MORRIS: It's a pause; it's an um. 14 Q. (BY MR. RUKAVINA) Germans call it flavoring 15 particle. 16 A. Sorry, I got lost there. If you can ask 17 again. 18 Q. Yeah. Do you recall in November or 19 December 2020 in your weekly meetings or anything else, 20 any discussion whatsoever concerning whether NexPoint 21 had made any prepayments on its note? 22 A. No discussions of whether or not there had 23 been a prepayment that I can remember, no. 24 Q. To the best of your knowledge sitting here 25 today -- strike that.</p>
<p style="text-align: right;">62</p> <p>1 meetings, even if it was almost in a nominal role, 2 because of some of my history that I had. So I was 3 still participating in those meetings. 4 I've worked closely with Kristin for a long 5 time, so I may have caught up with her informally. But 6 as far as day-to-day duties, I wasn't part of that team 7 anymore. 8 Q. And is it your, did I understand you 9 correctly, is it your testimony that Mr. Waterhouse 10 informed the whole accounting group there, the 11 corporate accounting group, of Mr. Dondero's 12 instruction? 13 A. I don't know specifically who he told, if he 14 told every single member of the team, but he certainly 15 told Kristin and Kristin was the head of the team. 16 Q. And you don't recall anyone, after you heard 17 about that instruction, raising any concern to the 18 effect that NexPoint is going to default and be in 19 trouble if that payment isn't made? 20 A. I don't remember any discussion to that 21 effect. 22 Q. Do you remember anyone suggesting that they 23 ought to try to dissuade Mr. Dondero from that 24 direction? 25 A. Not that I can remember.</p>	<p style="text-align: right;">64</p> <p>1 For my next question, again we're assuming 2 that Exhibit 14 is what it appears to be. 3 A. Sure, sure. 4 Q. So with that qualification, to the best of 5 your knowledge, other than what's on Exhibit 14, can 6 you think of any other record or source or document 7 that would address whether any unscheduled payments by 8 NexPoint would or wouldn't be prepayments on the note? 9 MR. MORRIS: Objection to the form of the 10 question. 11 THE WITNESS: Again, with the struggle of the 12 prepayment, this is the document that I would expect to 13 explain how the payment was applied. 14 Q. (BY MR. RUKAVINA) But you yourself did not 15 play any role in deciding how the payment would be 16 applied? 17 A. I'd hesitate to say no role, because the team 18 ultimately rolls up to me. 19 Q. You personally? 20 A. Me personally, I wouldn't have prepared these 21 schedules. 22 Q. Or decided, you personally, as Mr. Klos, how 23 any unscheduled payments should be accounted for by 24 Highland? 25 A. Correct, not without some -- some</p>

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<p style="text-align: right;">65</p> <p>1 authoritative direction on how they should be applied.</p> <p>2 Q. And that authoritative direction would have</p> <p>3 come from Mr. Waterhouse or Mr. Dondero?</p> <p>4 A. That's what I would expect.</p> <p>5 Q. Could it have come from anyone else that you</p> <p>6 can think of here today?</p> <p>7 A. Not that I can think of.</p> <p>8 Q. Now we're going to switch gears and I think</p> <p>9 we're going to stop discussing the NexPoint note, and</p> <p>10 we're going to focus on the HCMFA two promissory notes.</p> <p>11 A. Sure.</p> <p>12 Q. So we're going to go back in time to</p> <p>13 May 2019; okay?</p> <p>14 A. Sure.</p> <p>15 Q. And is it fair to say by -- that by May 2019</p> <p>16 there were at least dozens if not hundreds of instances</p> <p>17 of intercompany loans in the years leading up there</p> <p>18 from Highland to one of the other entities?</p> <p>19 MR. MORRIS: Objection to the form of the</p> <p>20 question.</p> <p>21 THE WITNESS: From Highland to one of the</p> <p>22 other entities. Can you help with other entities.</p> <p>23 Q. (BY MR. RUKAVINA) Advisors, the trusts, any</p> <p>24 of the Dondero entities?</p> <p>25 MR. MORRIS: Objection to the form of the</p>	<p style="text-align: right;">67</p> <p>1 Q. (BY MR. RUKAVINA) Are you familiar with</p> <p>2 Exhibits 1 and 2, sir?</p> <p>3 A. Yes, I am.</p> <p>4 Q. Do you remember them from back -- strike</p> <p>5 that.</p> <p>6 Did you have any role, to your knowledge,</p> <p>7 with the preparation of Exhibits 1 and/or 2?</p> <p>8 A. With the preparation of the documents?</p> <p>9 Q. Yeah.</p> <p>10 A. No.</p> <p>11 Q. But you did have some role with these</p> <p>12 promissory notes?</p> <p>13 A. Yes.</p> <p>14 Q. And I'm trying to find that email as well.</p> <p>15 There's an email here from you. I'll have it in a</p> <p>16 moment. That will help frame the question.</p> <p>17 MR. MORRIS: Exhibit 3.</p> <p>18 Q. (BY MR. RUKAVINA) Do you recall that email,</p> <p>19 sir?</p> <p>20 A. Not specifically, but it's right in front of</p> <p>21 me. I'm certain that I wrote this email.</p> <p>22 Q. You have no reason to deny or reject its</p> <p>23 authenticity?</p> <p>24 A. I have no reason to reject it or question it.</p> <p>25 Q. Just give me a second. I don't understand</p>
<p style="text-align: right;">66</p> <p>1 question.</p> <p>2 THE WITNESS: Yes, there would have been many</p> <p>3 loans over the years.</p> <p>4 Q. (BY MR. RUKAVINA) And do I understand that</p> <p>5 most, if not all, of those loans should have been</p> <p>6 papered up with a written promissory note?</p> <p>7 MR. MORRIS: Objection to the form of the</p> <p>8 question.</p> <p>9 THE WITNESS: Should have been. To the</p> <p>10 extent that they were for a promissory note, then yes.</p> <p>11 Q. (BY MR. RUKAVINA) So in the May 2019 time</p> <p>12 frame, was there a regular pattern or course or</p> <p>13 procedure in place as to how a promissory note would be</p> <p>14 physically prepared and presented for approval?</p> <p>15 MR. MORRIS: Objection to the form of the</p> <p>16 question.</p> <p>17 THE WITNESS: Yeah, when you say a process,</p> <p>18 can you please clarify that for me.</p> <p>19 Q. (BY MR. RUKAVINA) Sure. Let's look at these</p> <p>20 two promissory notes and maybe that will help frame the</p> <p>21 question. And I apologize for not having them right</p> <p>22 here.</p> <p>23 A. It might be --</p> <p>24 MR. MORRIS: 1 and 2.</p> <p>25 MR. RUKAVINA: Yes.</p>	<p style="text-align: right;">68</p> <p>1 what's going on with my exhibits. I just don't</p> <p>2 understand this.</p> <p>3 (Off the record.)</p> <p>4 Q. (BY MR. RUKAVINA) You have Exhibit 3 in</p> <p>5 front of you?</p> <p>6 A. I do.</p> <p>7 Q. And it says, please send 2.4 million from</p> <p>8 HCMLP to HCMFA. This is a new interco.</p> <p>9 Meaning intercompany; right?</p> <p>10 A. Correct.</p> <p>11 Q. This is a new intercompany loan.</p> <p>12 Who told you that this was an intercompany</p> <p>13 loan?</p> <p>14 A. Either Frank or Jim. I would suspect Frank.</p> <p>15 Q. Do you have any present memory of him telling</p> <p>16 you that with respect to this particular loan?</p> <p>17 A. I don't have a specific recollection, but</p> <p>18 with a hundred percent certainty he or Jim would have</p> <p>19 directed that.</p> <p>20 Q. Would they have directed the payment, or</p> <p>21 would they have directed that it be papered as a loan,</p> <p>22 or both?</p> <p>23 A. Both.</p> <p>24 Q. So in each instance -- well, let's take a</p> <p>25 step back.</p>

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<p style="text-align: right;">69</p> <p>1 So certainly either Jim or Frank directed you</p> <p>2 to transfer the \$2.4 million; correct?</p> <p>3 A. Either Jim or Frank would have directed, yes.</p> <p>4 There's 0 percent chance I would have sent this email</p> <p>5 if I didn't feel a hundred percent confident that this</p> <p>6 was authorized in the way that I described in the</p> <p>7 email.</p> <p>8 Q. But can you also say with certainty that</p> <p>9 either Dondero or Waterhouse also told you that this</p> <p>10 transfer is an intercompany loan?</p> <p>11 A. With a hundred percent certainty, yes. I</p> <p>12 can't say that necessarily with respect to Dondero,</p> <p>13 because I don't remember if I would have talked to him</p> <p>14 specifically about it. But, yes, this would have been</p> <p>15 clear that it's a loan.</p> <p>16 Q. You say clear. Did someone tell you that</p> <p>17 it's a loan, or are you just, because of the prior</p> <p>18 10 years of course and conduct, logically deciding that</p> <p>19 it has to be a loan?</p> <p>20 MR. MORRIS: Objection to the form of the</p> <p>21 question.</p> <p>22 THE WITNESS: So this is -- this is not just</p> <p>23 a situation of past practice. I would have known with</p> <p>24 certainty that this was a loan and that's what was</p> <p>25 authorized.</p>	<p style="text-align: right;">71</p> <p>1 within that fund.</p> <p>2 Q. Who made that NAV error?</p> <p>3 MR. MORRIS: Objection to the form of the</p> <p>4 question.</p> <p>5 THE WITNESS: Yeah, it's hard to answer that.</p> <p>6 So the Highland Capital Management Fund Advisors is the</p> <p>7 advisor to the fund, so they're the responsible party</p> <p>8 for making the fund whole in the instances of NAV</p> <p>9 errors.</p> <p>10 Q. (BY MR. RUKAVINA) And did HCMFA contract out</p> <p>11 with Highland for valuation services?</p> <p>12 MR. MORRIS: Objection to the form of the</p> <p>13 question.</p> <p>14 THE WITNESS: I don't specifically remember</p> <p>15 if they contracted for valuation services, but if you</p> <p>16 tell me that they did, I'll take that at face value.</p> <p>17 So yes, HCMFA utilized HCMLP for valuation services.</p> <p>18 Q. (BY MR. RUKAVINA) Do you have any memory of</p> <p>19 what human being or beings made that NAV error?</p> <p>20 MR. MORRIS: Objection to the form of the</p> <p>21 question.</p> <p>22 THE WITNESS: It's -- in respect to people,</p> <p>23 not particularly. In respect to parties, Houlihan</p> <p>24 Lokey was the service provider that performed the</p> <p>25 valuation that resulted in the NAV error.</p>
<p style="text-align: right;">70</p> <p>1 Q. (BY MR. RUKAVINA) How would you have known</p> <p>2 with certainty that it was a loan?</p> <p>3 A. I'll say in part because of past practice,</p> <p>4 but also because of the nature of what the money was</p> <p>5 going to be used for, and the background behind it.</p> <p>6 Q. So you knew that nature and that background?</p> <p>7 A. The nature and background of the 2.4 million,</p> <p>8 yes.</p> <p>9 Q. So you've told me that in part -- I asked you</p> <p>10 how did you know it was a loan. You said in part past</p> <p>11 practices, in part you knew the nature. Anything else?</p> <p>12 A. I'm certain that given that I wrote this</p> <p>13 email, which Frank is on, that I would have had a</p> <p>14 conversation with Frank about what this was.</p> <p>15 Q. Was Jim Dondero in the corporate accounting</p> <p>16 email?</p> <p>17 A. No, he wasn't.</p> <p>18 Q. So what is your understanding as to what this</p> <p>19 \$2.4 million was for?</p> <p>20 A. This related to -- well, to separate the</p> <p>21 transaction, the 2.4- itself relates to a promissory</p> <p>22 note. That's what was executed.</p> <p>23 HCMFA's use of the 2.4 million was to</p> <p>24 reimburse a fund that it managed called Highland Global</p> <p>25 Allocation Fund for a NAV error that had occurred</p>	<p style="text-align: right;">72</p> <p>1 And as I described before, the valuation</p> <p>2 function was housed at HCMLP by HCMLP employees</p> <p>3 supporting that through, among other people, front</p> <p>4 office, compliance, other parts of the organization as</p> <p>5 well.</p> <p>6 Q. (BY MR. RUKAVINA) So it was your</p> <p>7 understanding that Highland was loaning \$2.4 million to</p> <p>8 HCMFA for HCMFA to compensate that fund?</p> <p>9 A. Yes.</p> <p>10 Q. Did you have any understanding that Highland</p> <p>11 might have been, instead of loaning that money,</p> <p>12 actually paying that money to HCMFA to compensate HCMFA</p> <p>13 for Highland's valuation error?</p> <p>14 A. First, not Highland's valuation error. But</p> <p>15 second, no, there's no way that that would have been</p> <p>16 what that payment was for.</p> <p>17 Q. Why can you say that there's no way that that</p> <p>18 would have been what that payment was for?</p> <p>19 A. First, this wasn't the first NAV error that</p> <p>20 ever occurred. There had been other NAV errors. There</p> <p>21 were other NAV errors with respect to this valuation</p> <p>22 that pertain to NexPoint Advisors.</p> <p>23 There was no reimbursement from HCMLP to</p> <p>24 NexPoint or HCMFA, regardless of any individual being</p> <p>25 identified as the person. That had just never occurred</p>

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<p style="text-align: right;">73</p> <p>1 to my knowledge.</p> <p>2 Second, the amount was to meet the liquidity</p> <p>3 need of HCMFA. It wasn't to -- it wasn't to</p> <p>4 dollar-for-dollar make up for the NAV error. It was</p> <p>5 that's how much money HCMFA needed.</p> <p>6 Third, it was definitely Dondero's practice</p> <p>7 and preference to have expenses at HCMFA for tax</p> <p>8 purposes. So if this was compensation, he would</p> <p>9 ultimately not really be benefiting from the deduction</p> <p>10 so.</p> <p>11 That would have been a strong preference of</p> <p>12 his against having it be compensation.</p> <p>13 So it would have been excruciatingly clear</p> <p>14 that this was a loan for liquidity for HCMFA to make</p> <p>15 the fund whole, just like it had in the past NAV</p> <p>16 errors.</p> <p>17 Q. How did you know that HCMFA needed</p> <p>18 \$2.4 million for liquidity?</p> <p>19 A. At that point I was still part of the</p> <p>20 corporate team, so I had a good sense of how much cash</p> <p>21 HCMFA would have had at any given moment. And at that</p> <p>22 given moment it would not have had -- I'd be shocked if</p> <p>23 it had even 2.4-.</p> <p>24 Probably would have had probably between</p> <p>25 a million and 2 million if I had to speculate.</p>	<p style="text-align: right;">75</p> <p>1 HCMFA for the liquidity. HCMFA made the payment to the</p> <p>2 fund. It wasn't dollar for dollar. I think it was</p> <p>3 like 5,019,000, or some such number.</p> <p>4 But 5 million was the number that would allow</p> <p>5 it to make that payment effectively to the investors of</p> <p>6 Global Allocation Fund.</p> <p>7 Q. Do you have any understanding as to why</p> <p>8 Highland, as opposed to some other entity, was</p> <p>9 transferring \$7.4 million?</p> <p>10 A. Highland as opposed to some other entity?</p> <p>11 Q. Uh-huh.</p> <p>12 A. Because Highland had the money.</p> <p>13 Q. But I think we've established earlier that in</p> <p>14 the first seven months of 2019, Highland was having</p> <p>15 constant liquidity issues?</p> <p>16 A. It was.</p> <p>17 Q. And that's part of the reason that NexPoint</p> <p>18 was making unscheduled payments on its note; right?</p> <p>19 A. That's part of the reason NexPoint was making</p> <p>20 unscheduled payments on its note, yes.</p> <p>21 Q. So your recollection is that HCMFA needed</p> <p>22 \$2.4 million for liquidity purposes and about</p> <p>23 \$5 million for the consent fee. And Highland</p> <p>24 transferred those funds because Highland had the funds?</p> <p>25 A. Yes. And I should clarify that Highland only</p>
<p style="text-align: right;">74</p> <p>1 Q. Okay. So you've given the reasons why this</p> <p>2 was clearly a loan.</p> <p>3 But you never heard Mr. Dondero say that this</p> <p>4 was a loan, did you?</p> <p>5 A. I don't remember. It's possible I did, but I</p> <p>6 don't specifically remember.</p> <p>7 Q. Okay. What about the \$5 million loan on the</p> <p>8 day after? What was that \$5 million for?</p> <p>9 A. That was similar but different. So again,</p> <p>10 HCMFA needed liquidity. This time this was for --</p> <p>11 related to that same fund.</p> <p>12 So Highland Global Allocation Fund had</p> <p>13 converted from an open-end fund, mutual fund, to a</p> <p>14 closed-end mutual fund.</p> <p>15 And pursuant to that conversion there was a,</p> <p>16 I believe it was called a consent fee, for any</p> <p>17 investors of that fund who consented to the conversion,</p> <p>18 that they would receive a 3 percent fee payable by the</p> <p>19 investment advisor.</p> <p>20 And so at this time the bill came due on that</p> <p>21 because the conversion had been completed, and the</p> <p>22 accounting for how much that 3 percent was going to be</p> <p>23 was complete.</p> <p>24 HCMFA sure as hell didn't have 5 million</p> <p>25 bucks. Excuse my language. Highland needed to pay</p>	<p style="text-align: right;">76</p> <p>1 had the funds because Mr. Dondero repaid personal notes</p> <p>2 to HCMLP on the same days.</p> <p>3 So he paid 2.4 million on May 2, which</p> <p>4 Highland turned around and reloaned. And he paid 4.4-</p> <p>5 on May 3, and Highland sent out 5-, so there's a</p> <p>6 \$600,000 difference. And my recollection, he paid the</p> <p>7 other 600,000 via note repayment within a few days.</p> <p>8 Q. So this would have been part of some broader</p> <p>9 transaction in Mr. Dondero's mind?</p> <p>10 A. I would not characterize it that way.</p> <p>11 Q. You established that HCMFA needed money. You</p> <p>12 established that Highland temporarily had money because</p> <p>13 Dondero provided it with money.</p> <p>14 But you still don't know, sir, as a fact as</p> <p>15 to whether that transfer was a loan or some other</p> <p>16 payment from HCMFA -- I'm sorry from HCM, from debtor</p> <p>17 to HCMFA?</p> <p>18 MR. MORRIS: Objection to the form of the</p> <p>19 question. Asked and answered a million times. It's in</p> <p>20 the documents you're showing him.</p> <p>21 THE WITNESS: It was a loan.</p> <p>22 MR. MORRIS: Come on, Davor. With all due</p> <p>23 respect, it's in the document. It's on the document.</p> <p>24 Q. (BY MR. RUKAVINA) I'm being courteous and</p> <p>25 respectful to you and I'd ask the same in return; okay?</p>

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<p style="text-align: right;">77</p> <p>1 A. Absolutely. I apologize if I haven't been.</p> <p>2 Q. Mr. Dondero, would you agree, was the only</p> <p>3 person that had the authority at the debtor to</p> <p>4 authorize a transfer of 2.4- and then \$5 million?</p> <p>5 A. At the debtor?</p> <p>6 MR. MORRIS: Objection to the form of the</p> <p>7 question.</p> <p>8 Q. (BY MR. RUKAVINA) Yes, at the debtor.</p> <p>9 A. No.</p> <p>10 Q. Who else could have transferred 2.4 million</p> <p>11 or \$5 million?</p> <p>12 A. Those are two different questions. But if</p> <p>13 you're asking who had the authority, certainly Frank</p> <p>14 did as well.</p> <p>15 Q. So Frank had the authority. Perhaps my</p> <p>16 question was inartful.</p> <p>17 Do you believe that Mr. Waterhouse would have</p> <p>18 decided to transfer \$2.4 million or \$5 million without</p> <p>19 Mr. Dondero's approval?</p> <p>20 MR. MORRIS: Objection to the form of the</p> <p>21 question.</p> <p>22 THE WITNESS: Generally speaking, no, but I</p> <p>23 don't know exactly what the form of the approval. But</p> <p>24 he certainly wouldn't have done that on his own without</p> <p>25 discussing with Dondero.</p>	<p style="text-align: right;">79</p> <p>1 into the note on behalf of HCMFA, yes.</p> <p>2 Q. (BY MR. RUKAVINA) Was that something that he</p> <p>3 would have done without Mr. Dondero's approval to your</p> <p>4 understanding and practice at that time?</p> <p>5 MR. MORRIS: Objection to the form of the</p> <p>6 question.</p> <p>7 THE WITNESS: Same answer that I gave before</p> <p>8 with respect to Highland.</p> <p>9 Q. (BY MR. RUKAVINA) So here's where I'm going</p> <p>10 with all this.</p> <p>11 Mr. Dondero's position, and tomorrow his</p> <p>12 testimony will be, that he caused the \$7.4 million to</p> <p>13 be transferred not as a loan to HCMFA, but to</p> <p>14 compensate HCMFA for various things including that NAV</p> <p>15 error.</p> <p>16 Other than perhaps you think he's lying,</p> <p>17 would you have any knowledge, hearsay, document,</p> <p>18 anything, to contradict Mr. Dondero's position?</p> <p>19 MR. MORRIS: Objection to the form of the</p> <p>20 question.</p> <p>21 THE WITNESS: Yes. I would point to the fact</p> <p>22 that as it pertains to the \$5 million note, if we're</p> <p>23 separating issues, there's no other possibility of what</p> <p>24 that money could be other than either a loan or equity.</p> <p>25 It's not compensation. Highland is under --</p>
<p style="text-align: right;">78</p> <p>1 Q. (BY MR. RUKAVINA) Do you believe that</p> <p>2 Mr. Waterhouse had the ability on behalf of the debtor</p> <p>3 to loan \$5 million without Mr. Dondero's approval?</p> <p>4 MR. MORRIS: Objection to the form of the</p> <p>5 question.</p> <p>6 THE WITNESS: I think he had the technical</p> <p>7 authority to. However, I don't believe in practice</p> <p>8 that he ever would.</p> <p>9 Q. (BY MR. RUKAVINA) Same question, \$2.4</p> <p>10 million?</p> <p>11 A. Same answer.</p> <p>12 Q. We've established that you never really had a</p> <p>13 direct employment or types of a role for NexPoint --</p> <p>14 I'm sorry, for HCMFA; right?</p> <p>15 A. Again --</p> <p>16 Q. To the best of your recollection?</p> <p>17 A. Best of my recollection I can't remember how</p> <p>18 the titles transferred over or whatever, but I don't</p> <p>19 believe I did.</p> <p>20 Q. Do you know whether Mr. Waterhouse in 2019</p> <p>21 had the authority, without Mr. Dondero's approval, to</p> <p>22 borrow \$7.4 million on behalf of HCMFA?</p> <p>23 MR. MORRIS: Objection to the form of the</p> <p>24 question.</p> <p>25 THE WITNESS: He had the authority to enter</p>	<p style="text-align: right;">80</p> <p>1 HCMLP has absolutely zero obligation in respect to that</p> <p>2 consent fee. So when Highland sends \$5 million to HCMFA</p> <p>3 there's nothing else that it can be. That's Point 1.</p> <p>4 Point 2, we're right in the middle of an audit</p> <p>5 at this point. Jim signs rep letters at this point.</p> <p>6 He's being provided balance sheets throughout 2019 that</p> <p>7 indicate the loans that Highland has on its books.</p> <p>8 Balance sheets are being prepared in respect</p> <p>9 of annual approvals for 15(c) for retail funds in the</p> <p>10 fall. Schedules are being created for bankruptcy after</p> <p>11 we file in October.</p> <p>12 Nobody says this is a mistake. Frank is on</p> <p>13 all of these emails. Frank never questions it.</p> <p>14 There's absolutely no evidence from that point</p> <p>15 in time to whenever this defense got raised that would</p> <p>16 indicate that anybody said that these weren't exactly</p> <p>17 what they say they are.</p> <p>18 Q. (BY MR. RUKAVINA) Are you aware that in</p> <p>19 February or March 2019 some \$5.2 million was paid from</p> <p>20 insurance that HCMFA had to the fund for the NAV error?</p> <p>21 A. The amount sounds unfamiliar, but I'm aware</p> <p>22 that insurance proceeds were paid from HCMFA to the</p> <p>23 fund.</p> <p>24 Q. And do you think that it's impossible for a</p> <p>25 sane, rational person to conclude that HCMFA had a</p>

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<p style="text-align: right;">81</p> <p>1 claim against the debtor related to that NAV error?</p> <p>2 MR. MORRIS: Objection to the form of the</p> <p>3 question.</p> <p>4 THE WITNESS: If it did, I don't know how</p> <p>5 that's not insurance fraud for basically double</p> <p>6 collecting insurance proceeds and then collecting it</p> <p>7 again.</p> <p>8 Q. (BY MR. RUKAVINA) So you believe, sir, that</p> <p>9 if insurance pays a claim you have no more right to go</p> <p>10 against a person who caused the fault?</p> <p>11 MR. MORRIS: Objection to the form of the</p> <p>12 question.</p> <p>13 THE WITNESS: We can speak specifically here.</p> <p>14 This is about a NAV error that an insurance company</p> <p>15 reimbursed HCMFA for, which it then turned around and</p> <p>16 paid for the fund.</p> <p>17 So if it went to collect that same, let's use</p> <p>18 round numbers, \$5 million from Highland that it's</p> <p>19 already collected from insurance, that sounds</p> <p>20 inappropriate to me.</p> <p>21 Q. (BY MR. RUKAVINA) Okay. But you don't know</p> <p>22 whether that's allowed in Texas law or not, do you?</p> <p>23 MR. MORRIS: Objection to the form of the</p> <p>24 question.</p> <p>25 THE WITNESS: No, I don't know whether it's</p>	<p style="text-align: right;">83</p> <p>1 A. Yes, I am. I believe Kristin sent that one.</p> <p>2 Q. Kristin sent that one?</p> <p>3 A. I believe so.</p> <p>4 Q. To whom?</p> <p>5 A. Likely the same distribution group, but</p> <p>6 that's speculation.</p> <p>7 Q. Did you see such an email in the last week or</p> <p>8 two?</p> <p>9 A. I'm not certain, but probably. I have seen</p> <p>10 email communication on or around May 3, but I don't</p> <p>11 know specifically who all was on the email. I'm going</p> <p>12 off what I would expect to see.</p> <p>13 MR. MORRIS: If you're really interested,</p> <p>14 it's right here. It was produced to you with</p> <p>15 Bates 3763. And if you'd like to question the witness.</p> <p>16 MR. RUKAVINA: When was it produced?</p> <p>17 MR. MORRIS: I can't tell you. It's part of</p> <p>18 the same package.</p> <p>19 Q. (BY MR. RUKAVINA) So going back to this</p> <p>20 Exhibit 3, sir, why did you ask Kristin, can you or</p> <p>21 Hayley please prep a note for execution? Why them?</p> <p>22 Remember, I was asking about what the course</p> <p>23 or procedure was at that point in time.</p> <p>24 A. Yeah, so nomenclature, procedure, process.</p> <p>25 I would say the informal process for these</p>
<p style="text-align: right;">82</p> <p>1 allowed under Texas law.</p> <p>2 Q. (BY MR. RUKAVINA) So you don't know that if</p> <p>3 you're hit by someone on the street and your medical</p> <p>4 insurance pays your bills, you don't know that he still</p> <p>5 has to pay you for the same bills?</p> <p>6 MR. MORRIS: Objection to the form of the</p> <p>7 question. I hope I don't miss my plane.</p> <p>8 Q. (BY MR. RUKAVINA) You don't know that under</p> <p>9 Texas law if someone hits you with their car and causes</p> <p>10 you medical bills and your medical insurance pays those</p> <p>11 bills, that you can still sue them for the same</p> <p>12 damages?</p> <p>13 MR. MORRIS: Objection to the form of the</p> <p>14 question.</p> <p>15 THE WITNESS: I'm not familiar at any level</p> <p>16 of specificity with Texas law.</p> <p>17 Q. (BY MR. RUKAVINA) Again, it just sounds</p> <p>18 wrong to you that you could go after someone after</p> <p>19 insurance pays, but you don't know legally one way or</p> <p>20 the other?</p> <p>21 A. Correct. I'm not a lawyer or expert in Texas</p> <p>22 law. It feels wrong, yes.</p> <p>23 Q. Okay. Going back to this email of yours,</p> <p>24 Exhibit 3, do you recall whether there was a similar</p> <p>25 email with respect to the \$5 million note?</p>	<p style="text-align: right;">84</p> <p>1 types of loans, they were frequent in nature, would be</p> <p>2 for someone on the corporate accounting team to prepare</p> <p>3 a note and have it executed.</p> <p>4 Q. Okay. That was the standard course back</p> <p>5 then?</p> <p>6 A. Again, I don't know what standard course</p> <p>7 means. That was fairly typical.</p> <p>8 Q. Why would you not have asked someone in the</p> <p>9 Highland legal department to prepare a note?</p> <p>10 A. Because this was a legally reviewed document</p> <p>11 as far as the form of the agreement. It's a one-page,</p> <p>12 two-paragraph form that had been used for a long time.</p> <p>13 So the only thing that would change with</p> <p>14 respect to these notes would be the date, the amount,</p> <p>15 likely the rate. I can't think of anything else</p> <p>16 offhand that would have changed from note to note.</p> <p>17 Q. After you asked Ms. Hendrix to prepare this</p> <p>18 note, did you have any further role with respect to the</p> <p>19 papering, preparation, or execution of that note?</p> <p>20 A. Not that I can remember.</p> <p>21 Q. Would you have had any role in having either</p> <p>22 or both of the notes actually signed electronically or</p> <p>23 by ink by Mr. Waterhouse?</p> <p>24 A. Likely not, no.</p> <p>25 Q. Do you know who decided to have</p>

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<p style="text-align: right;">85</p> <p>1 Mr. Waterhouse as opposed to Mr. Dondero sign these two</p> <p>2 promissory notes?</p> <p>3 A. I don't.</p> <p>4 Q. On the \$5 million note, do you remember if</p> <p>5 you had any role with respect to its physical papering</p> <p>6 or execution?</p> <p>7 A. Not that I recall.</p> <p>8 Q. To the best of your memory, your role would</p> <p>9 have been done by instructing your team, hey, here is</p> <p>10 these new loans, go paper it up; is that accurate?</p> <p>11 A. On the upfront side. I suppose my role would</p> <p>12 have also included on the back end making sure that the</p> <p>13 actual payment had occurred. But that would have been</p> <p>14 doing that realtime, seeing the funds went out, and</p> <p>15 that, most importantly, that the consent fee had been</p> <p>16 paid from HCMFA to the transfer agent.</p> <p>17 Q. How did you or anyone on your team know -- so</p> <p>18 obviously, you know it's a \$2.4 million loan because</p> <p>19 that's what Waterhouse or Dondero told you; right?</p> <p>20 How did you know it was a \$2.4 million loan?</p> <p>21 MR. MORRIS: Objection. Asked and answered.</p> <p>22 THE WITNESS: I knew that the NAV error was</p> <p>23 2 million, I think it was 398,000, somewhere in that</p> <p>24 ballpark. And that 2.4- had been authorized for that</p> <p>25 purpose.</p>	<p style="text-align: right;">87</p> <p>1 Q. Did you have any understanding in early May</p> <p>2 of 2019 as to whether HCMFA was solvent or insolvent?</p> <p>3 MR. MORRIS: Objection to the form of the</p> <p>4 question.</p> <p>5 THE WITNESS: Whether HCMFA was solvent or</p> <p>6 insolvent? I'm not a solvency expert, so I don't know</p> <p>7 that I could even attempt to answer that.</p> <p>8 Q. (BY MR. RUKAVINA) Did you have an</p> <p>9 understanding as far as HCMFA goes on May 2, 2019, that</p> <p>10 its liabilities exceeded its assets?</p> <p>11 A. I don't remember specifically where it stood</p> <p>12 on assets versus liabilities.</p> <p>13 Q. Do you have any memory that by May 2, 2019,</p> <p>14 the debtor had taken a couple prior demand notes from</p> <p>15 HCMFA and made them not collectible prior to May 31,</p> <p>16 2021?</p> <p>17 A. I know what you're referring to. I wouldn't</p> <p>18 characterize it that way.</p> <p>19 Q. How would you characterize it?</p> <p>20 A. I recall that there was a financial support</p> <p>21 acknowledgment, I think it was the name of the</p> <p>22 acknowledgment.</p> <p>23 That described -- I can't remember if it</p> <p>24 described those two notes specifically or just referred</p> <p>25 to them, that there would not be collection sought on</p>
<p style="text-align: right;">86</p> <p>1 Q. (BY MR. RUKAVINA) Do you know who decided</p> <p>2 what the interest rate in this note would be, or that</p> <p>3 it would be a demand note as opposed to a term note?</p> <p>4 A. I don't specifically know who made that</p> <p>5 decision. However, the common practice for fund</p> <p>6 advisors was to put -- was for the rate to equal the, I</p> <p>7 forget if it was the short-term or long-term AFR.</p> <p>8 And for the note to be demand, that was just</p> <p>9 the standard -- that was the standard.</p> <p>10 Q. And I think I asked this, but just if I</p> <p>11 didn't.</p> <p>12 For either or both of these two notes, the</p> <p>13 2.4- and \$5 million note, did you have any role with</p> <p>14 respect to Mr. Waterhouse signing them?</p> <p>15 A. No, not that I can remember. I don't think I</p> <p>16 did.</p> <p>17 Q. And you don't remember doing anything to get</p> <p>18 his signatures?</p> <p>19 A. Not that I recall.</p> <p>20 Q. Nor would that have been something that you</p> <p>21 would expect that you would have a role with?</p> <p>22 A. Certainly not in this instance. Maybe to the</p> <p>23 extent that nobody else was around and it was time</p> <p>24 sensitive, but that wouldn't have been the case with</p> <p>25 these, I don't believe.</p>	<p style="text-align: right;">88</p> <p>1 those until May 31 of 2021.</p> <p>2 Q. Do you remember why that document was done?</p> <p>3 A. My recollection, and it could have been done</p> <p>4 for other reasons, but my recollection of it was that</p> <p>5 it was primarily audit-driven.</p> <p>6 For the auditors to be comfortable that these</p> <p>7 notes weren't going to be just called and FA not have</p> <p>8 the ability to pay them right away.</p> <p>9 Q. Because it's true in April or May of 2019</p> <p>10 HCMFA didn't have the ability to pay those notes;</p> <p>11 correct?</p> <p>12 A. It didn't have enough cash to pay those.</p> <p>13 Q. And I think you mentioned before that in</p> <p>14 May 2019 the auditors at the Highland level were</p> <p>15 talking about rolling up prior demand notes into term</p> <p>16 notes so the debtor would at least get some regular</p> <p>17 cash flow; correct?</p> <p>18 MR. MORRIS: Objection to the form of the</p> <p>19 question.</p> <p>20 THE WITNESS: No.</p> <p>21 Q. (BY MR. RUKAVINA) So you recall that -- I'm</p> <p>22 sorry, that was 2017. I was wrong; right?</p> <p>23 A. Correct.</p> <p>24 Q. So I guess here is my question, and I'm</p> <p>25 struggling to understand this.</p>

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<p style="text-align: right;">89</p> <p>1 So why would Highland be loaning an</p> <p>2 additional \$7.4 million in early May of 2019 to HCMFA</p> <p>3 when HCMFA already was then unable to repay its debts</p> <p>4 to Highland?</p> <p>5 MR. MORRIS: Objection to the form of the</p> <p>6 question.</p> <p>7 THE WITNESS: Yeah, I kind of reject the</p> <p>8 premise of the question, and these are all controlled</p> <p>9 by Jim. And it's completely within his power at any</p> <p>10 point in time to make any payment on any of the loans,</p> <p>11 depending on where priorities sit.</p> <p>12 So the idea that HCMFA -- that Highland would</p> <p>13 be doing a credit analysis on HCMFA, determining that it</p> <p>14 was unable to make that payment and, therefore, this is</p> <p>15 a bad note, is a completely foreign, preposterous</p> <p>16 concept at that time.</p> <p>17 Q. (BY MR. RUKAVINA) And in May of 2019 isn't</p> <p>18 it also, sir, the case that Mr. Dondero could have,</p> <p>19 right or wrong, agree or disagree, said, that 7.4- is</p> <p>20 going to compensate HCMFA for the NAV error as opposed</p> <p>21 to being a loan?</p> <p>22 A. No.</p> <p>23 Q. That's not possible?</p> <p>24 A. No.</p> <p>25 Q. And why is that not possible?</p>	<p style="text-align: right;">91</p> <p>1 Q. (BY MR. RUKAVINA) So it had to have been a</p> <p>2 loan; correct?</p> <p>3 MR. MORRIS: Objection to the form of the</p> <p>4 question.</p> <p>5 THE WITNESS: In these instances I know it to</p> <p>6 have been a loan.</p> <p>7 Q. (BY MR. RUKAVINA) Because of what</p> <p>8 Mr. Waterhouse told you?</p> <p>9 MR. MORRIS: Objection to the form of the</p> <p>10 question. Asked and answered.</p> <p>11 THE WITNESS: Yeah, it was my understanding</p> <p>12 that these were loans.</p> <p>13 Q. (BY MR. RUKAVINA) You know these 7.4- to be</p> <p>14 loans even though you never heard Mr. Dondero say that</p> <p>15 to you?</p> <p>16 A. Yes, although to be fair, I don't know</p> <p>17 whether I ever heard Mr. Dondero. It's possible he did</p> <p>18 say it.</p> <p>19 MR. MORRIS: Objection. Withdrawn.</p> <p>20 Q. (BY MR. RUKAVINA) You have no memory that on</p> <p>21 or before May 4, 2019 you heard Mr. Dondero say that</p> <p>22 the \$2.4 million transfer and/or the \$5 million</p> <p>23 transfer to HCMFA were loans?</p> <p>24 A. I have no specific recollection, but such a</p> <p>25 conversation is just off the reservation impossible.</p>
<p style="text-align: right;">90</p> <p>1 A. As we discussed, the 5-, there's absolutely</p> <p>2 no construct where that can be compensation for an NAV</p> <p>3 error. It's not a NAV error. It's a consent fee.</p> <p>4 Highland has absolutely no responsibility for that.</p> <p>5 Highland also has no responsibility for the</p> <p>6 2.4-, but if you want to assume that it did, that's</p> <p>7 completely not the practice. It was Jim's preference</p> <p>8 to do these via loans, and that's how it was booked.</p> <p>9 Q. You're saying on the one hand Mr. Dondero can</p> <p>10 absolutely control that one entity make a loan to</p> <p>11 another, irrespective of credit worthiness, but he</p> <p>12 can't decide that a transfer is compensation as opposed</p> <p>13 to a loan?</p> <p>14 MR. MORRIS: Objection to the form of the</p> <p>15 question. Argumentative.</p> <p>16 THE WITNESS: If he wants to call</p> <p>17 \$7.4 million compensation to himself or to HCMFA, I</p> <p>18 just don't know how he does that. This is me being an</p> <p>19 accountant. I don't know how that's possible.</p> <p>20 If he wants to pay himself a \$7.4 million</p> <p>21 bonus from HCMFA, fine, he has the power to do that. If</p> <p>22 he wants Highland to inject 7.4 million of equity into</p> <p>23 HCMFA, he has the power to do that.</p> <p>24 But sending the 7.4 million and calling it</p> <p>25 something else, I don't know how he could do that.</p>	<p style="text-align: right;">92</p> <p>1 That there's no way -- there's no way -- there's no way</p> <p>2 that it would have been described that way and there's</p> <p>3 a hundred percent that it's loan.</p> <p>4 Q. Do you have any memory discussing prior --</p> <p>5 MR. MORRIS: Objection. Asked and answered.</p> <p>6 He's answered this a thousand times.</p> <p>7 Q. (BY MR. RUKAVINA) Do you have any memory on</p> <p>8 or before May 2, 2019 discussing the \$2.4 million</p> <p>9 transfer with Mr. Dondero at all?</p> <p>10 A. I do recall, I don't remember the time, but I</p> <p>11 do remember discussing the NAV error in general terms</p> <p>12 and the potential magnitude of that. I don't remember</p> <p>13 specifically when that occurred.</p> <p>14 Q. At least in your discussion with Mr. Dondero,</p> <p>15 the \$2.4 million loan or note was somehow linked to the</p> <p>16 NAV error?</p> <p>17 A. Linked to the NAV error is strong. It</p> <p>18 related to the NAV error from the standpoint that</p> <p>19 that's what Highland was loaning HCMFA the money for,</p> <p>20 because HCMFA couldn't otherwise make the payment</p> <p>21 itself.</p> <p>22 Q. You just said Highland was loaning the money</p> <p>23 for. Are you remembering now Mr. Dondero saying that</p> <p>24 or are you just extrapolating?</p> <p>25 A. No, I'm explaining rationally what the</p>

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<p style="text-align: right;">93</p> <p>1 situation was.</p> <p>2 Q. Do you remember on or before May 3, 2019</p> <p>3 discussing the \$5 million transfer with Mr. Dondero?</p> <p>4 A. Again, in general terms. I couldn't tell you</p> <p>5 a time period, but this was something that, between</p> <p>6 Frank and I, we had put on Jim's radar that this would</p> <p>7 be a cash need in the future. I couldn't specify</p> <p>8 specifically when that happened.</p> <p>9 Q. Okay. You have no present memory of</p> <p>10 discussing that issue with Mr. Dondero on or before</p> <p>11 May 3, 2019? It must have happened but you have no</p> <p>12 memory?</p> <p>13 MR. MORRIS: Objection to the form of the</p> <p>14 question.</p> <p>15 THE WITNESS: We discussed that there would</p> <p>16 be a consent fee payable from HCMFA. We would have</p> <p>17 discussed -- and again, I don't remember where I was,</p> <p>18 what day it was, the specifics around the conversation.</p> <p>19 But I know that we had conversations</p> <p>20 pertaining to cash, because this was a large need for --</p> <p>21 cash need for HCMFA to satisfy this, and this was an</p> <p>22 important payment.</p> <p>23 And neither HCMFA nor Highland had the</p> <p>24 wherewithal to make that payment. The only way that</p> <p>25 those could make the payment was by Jim Dondero repaying</p>	<p style="text-align: right;">95</p> <p>1 Q. So it's possible that Mr. Dondero told no one</p> <p>2 that these were loans but because y'all have been doing</p> <p>3 it this way for 10 years, that everyone, all of you</p> <p>4 CPAs, understood that it had to be a loan?</p> <p>5 MR. MORRIS: Objection to the form of the</p> <p>6 question.</p> <p>7 Q. (BY MR. RUKAVINA) My question is, is that</p> <p>8 possible?</p> <p>9 A. I really don't think it's possible. I</p> <p>10 suppose people say anything is possible. Again, two</p> <p>11 and a half years ago, I'm certain that that was the</p> <p>12 intent at the time and I'm sure it was communicated as</p> <p>13 such. I just don't have a specific recollection.</p> <p>14 MR. RUKAVINA: Thank you.</p> <p>15 I'll pass the witness.</p> <p>16 MR. MORRIS: Michael, do you have any</p> <p>17 questions?</p> <p>18 MR. AIGEN: I do. I assume you want me to</p> <p>19 start now to do my best to be done at 5:00?</p> <p>20 MR. MORRIS: Yes, please.</p> <p>21 EXAMINATION</p> <p>22 Q. (BY MR. AIGEN) Good afternoon, Mr. Klos. My</p> <p>23 name is Michael Aigen with the Stinson law firm. I</p> <p>24 represent Mr. Dondero, HCMS, and HCRE.</p> <p>25 How are you today?</p>
<p style="text-align: right;">94</p> <p>1 loans that he owed to HCMLP. So we absolutely discussed</p> <p>2 that with Jim Dondero.</p> <p>3 Q. (BY MR. RUKAVINA) And with respect to</p> <p>4 everything that we just talked about and your</p> <p>5 recollection, you still don't remember Mr. Dondero</p> <p>6 saying to you or Mr. Waterhouse one way or the other</p> <p>7 that one or both of these transfers were loans?</p> <p>8 MR. MORRIS: Objection to the form of the</p> <p>9 question. Asked and answered.</p> <p>10 THE WITNESS: Yeah, again --</p> <p>11 Q. (BY MR. RUKAVINA) Just yes or no. This is a</p> <p>12 yes-or-no question.</p> <p>13 MR. MORRIS: Let him answer the question.</p> <p>14 MR. RUKAVINA: If he'll answer the question</p> <p>15 I'll stop asking him --</p> <p>16 MR. MORRIS: He's allowed --</p> <p>17 Q. (BY MR. RUKAVINA) The answer [verbatim] is,</p> <p>18 do you remember --</p> <p>19 A. I don't remember Jim's exact words two and a</p> <p>20 half years ago in respect to authorizing these</p> <p>21 payments. So to answer your question, no, I don't</p> <p>22 specifically remember him saying these are loans.</p> <p>23 But every other fact around this tells me</p> <p>24 that we did have that conversation and that was the</p> <p>25 conclusion and that was the direction.</p>	<p style="text-align: right;">96</p> <p>1 A. I'm very good, thank you.</p> <p>2 Q. First topic I wanted to ask you about is the</p> <p>3 defense raised by some of the defendants related to an</p> <p>4 oral agreement and condition subsequent.</p> <p>5 So my question for you generally is, are you</p> <p>6 aware that some of the defendants in these proceedings</p> <p>7 have raised a defense that there was a subsequent oral</p> <p>8 agreement allowing notes to be potentially forgiven if</p> <p>9 certain events occur?</p> <p>10 A. Yeah, I'm generally aware of the defenses</p> <p>11 sitting here today.</p> <p>12 Q. And how are you generally aware of this</p> <p>13 defense?</p> <p>14 A. I don't know with specificity. Potentially</p> <p>15 through just document flow on the bankruptcy side,</p> <p>16 potentially with conversations internally or with</p> <p>17 counsel. But I generally understand them to have been</p> <p>18 raised, the defenses that is.</p> <p>19 Q. And I don't want to get into conversations</p> <p>20 with counsel. I'm not allowed to do that.</p> <p>21 Let me ask you, have you had any</p> <p>22 conversations with anyone other than counsel about this</p> <p>23 subsequent oral agreement defense?</p> <p>24 A. I have had general conversations with</p> <p>25 Mr. Seery about it. And other than that, nothing</p>

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<p style="text-align: right;">97</p> <p>1 substantive.</p> <p>2 Q. And what did you discuss about this with</p> <p>3 Mr. Seery?</p> <p>4 A. I've discussed with him, I hate to phrase it</p> <p>5 this way, the ridiculousness of the defense. Under</p> <p>6 oath. I've discussed my general understanding of what</p> <p>7 is being asserted as a defense.</p> <p>8 Which is that there was some sort of an oral</p> <p>9 agreement between Jim and his sister at some point in</p> <p>10 the past pertaining to forgiveness of certain</p> <p>11 promissory notes that was conditional upon Highland</p> <p>12 monetizing any of three PE assets for any amount above</p> <p>13 cost.</p> <p>14 Q. And is it fair to say that prior to these</p> <p>15 lawsuits being brought, you weren't aware of any oral</p> <p>16 agreements related to the promissory notes related to</p> <p>17 potential forgiveness?</p> <p>18 A. That's correct. Not that I can remember, and</p> <p>19 I think I would remember.</p> <p>20 Q. And other than your conversations with</p> <p>21 Mr. Seery and counsel, you haven't had any</p> <p>22 conversations with anyone else about these alleged oral</p> <p>23 agreements; is that fair to say?</p> <p>24 A. I'm not sure I understand the question.</p> <p>25 Q. You told me you may have had questions with</p>	<p style="text-align: right;">99</p> <p>1 Q. Is it fair to say that if those payments were</p> <p>2 to be made, it would have been Ms. Hendrix that would</p> <p>3 have gone and effectuated those payments?</p> <p>4 MR. MORRIS: Objection to the form of the</p> <p>5 question.</p> <p>6 THE WITNESS: Can you remind me the entities</p> <p>7 again.</p> <p>8 Q. (BY MR. AIGEN) Sorry. HCMS and HCRE</p> <p>9 Partners.</p> <p>10 A. HCMS, yes. HCRE, I'm not sure, maybe.</p> <p>11 Q. Why might it have been different?</p> <p>12 A. I just don't recall who had the, you know,</p> <p>13 kind of bank access to effectuate that payment. I</p> <p>14 think Kristin did but I'm not certain.</p> <p>15 Q. It wouldn't have been you; is that fair to</p> <p>16 say?</p> <p>17 A. Correct. It would not have been me.</p> <p>18 Q. And if Ms. Hendrix testified that the</p> <p>19 instruction she received in December 2020 about not</p> <p>20 making payments related only to the Advisors and not to</p> <p>21 HMS or HCRE, would you have any reason to disagree with</p> <p>22 her?</p> <p>23 MR. MORRIS: Objection to the form of the</p> <p>24 question.</p> <p>25 THE WITNESS: Yeah, I was struggling with</p>
<p style="text-align: right;">98</p> <p>1 counsel about these oral agreements defense, and you</p> <p>2 told me about conversations with Mr. Seery, so I'm</p> <p>3 trying to close that topic.</p> <p>4 Was there anyone else you had any</p> <p>5 conversations with about this alleged oral agreement?</p> <p>6 A. Like I said before, nothing of substance.</p> <p>7 I've probably mentioned it in passing to other</p> <p>8 employees, this is what I understand is being asserted</p> <p>9 in this, but nothing of substance.</p> <p>10 Q. Do you have any personal knowledge as to</p> <p>11 whether Mr. Dondero or Ms. Dondero entered into any</p> <p>12 type of oral agreement prior to the bankruptcy?</p> <p>13 A. No, not other than what's been pled, or</p> <p>14 whatever the terminology is.</p> <p>15 Q. I want to talk a little bit about, you</p> <p>16 touched on earlier, you gave some testimony about how</p> <p>17 in -- there were certain term loans that had payments</p> <p>18 due in December or on or about December 31, 2020.</p> <p>19 Do you remember talking about that?</p> <p>20 A. Yeah, generally.</p> <p>21 Q. And I don't know if you're specifically</p> <p>22 referring to these loans, but is it also your</p> <p>23 understanding that HCMS and HCRE also had payments that</p> <p>24 were due on December 31, 2020?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">100</p> <p>1 that question. There was a lot to it. If you don't</p> <p>2 mind.</p> <p>3 Q. (BY MR. AIGEN) Okay. I'll repeat it. Maybe</p> <p>4 that will help.</p> <p>5 MR. MORRIS: Why don't you ask him about his</p> <p>6 knowledge, instead of Kristin's. You had her as a</p> <p>7 witness.</p> <p>8 I'll continue to object. I don't know why</p> <p>9 you're asking him about her knowledge.</p> <p>10 MR. AIGEN: Do you want to keep coaching him?</p> <p>11 MR. MORRIS: No, I'm trying to coach you.</p> <p>12 MR. AIGEN: Oh, thanks. That's good.</p> <p>13 Appreciate if you stop coaching your witness.</p> <p>14 Q. (BY MR. AIGEN) If Ms. Hendrix testified that</p> <p>15 the instructions she received in December 2020</p> <p>16 regarding not making any more payments related only to</p> <p>17 the Advisors and not to HMS or HCRE, would you have any</p> <p>18 reason to disagree with her?</p> <p>19 MR. MORRIS: Objection to the form of the</p> <p>20 question.</p> <p>21 THE WITNESS: I have no reason to question</p> <p>22 Kristin's testimony. I'm sure she gave truthful</p> <p>23 testimony.</p> <p>24 Q. (BY MR. AIGEN) Are you aware or not of</p> <p>25 whether Ms. Hendrix was told by Mr. Waterhouse not to</p>

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<p style="text-align: right;">101</p> <p>1 make payments from certain entities in December of 2 2020?</p> <p>3 MR. MORRIS: Objection to the form of the 4 question.</p> <p>5 THE WITNESS: Yeah, I'm aware, and I think I 6 spoke to that earlier of the instruction that had come 7 down from Dondero through Frank to Kristin, and I was 8 certainly aware of it.</p> <p>9 And I'm -- and I think I spoke to the fact 10 that, you know, certainly hearing it from a person who, 11 as I said before, wasn't really on the team at that 12 point, it was certainly my understanding that that was a 13 global instruction at the time.</p> <p>14 Q. (BY MR. AIGEN) And I want to get into what 15 was actually said and what you remember, so let me ask 16 you this.</p> <p>17 This instruction that came down started from 18 Jim and went to Frank. Is that your understanding?</p> <p>19 A. That's my understanding.</p> <p>20 Q. You weren't there during that discussion I 21 assume; is that correct?</p> <p>22 A. Correct, I was not.</p> <p>23 Q. And then Frank gave an instruction to 24 Kristin; is that your recollection?</p> <p>25 MR. MORRIS: Objection to the form of the</p>	<p style="text-align: right;">103</p> <p>1 Q. When you say it was conveyed to you, are you 2 talking about subsequent discussions that you had with 3 Ms. Hendrix and Mr. Waterhouse after they talked to 4 each other?</p> <p>5 A. Yes.</p> <p>6 Q. Sitting here today, can you tell me for sure 7 that one of them told you that this instruction related 8 to all of the entities, as opposed to just the 9 Advisors?</p> <p>10 A. No, I can't say that with certainty, but I 11 think that that was the case. But, again, I can't say 12 with certainty.</p> <p>13 Q. Would you defer to Mr. Waterhouse and 14 Ms. Hendrix over what the specific instructions were?</p> <p>15 MR. MORRIS: Objection to the form of the 16 question.</p> <p>17 THE WITNESS: Like I said, I wasn't part of 18 the conversation, so I would defer to people who 19 received the directions more directly.</p> <p>20 Q. (BY MR. AIGEN) And you're not aware of 21 anything in writing or anything that reflects these 22 instructions on whether to pay or not to pay certain 23 payments in December of 2020?</p> <p>24 A. No, I'm not aware of anything in writing.</p> <p>25 Q. And let's change topics for a second here.</p>
<p style="text-align: right;">102</p> <p>1 question.</p> <p>2 THE WITNESS: Yeah, it's my understanding 3 that Frank informed Kristin of that instruction.</p> <p>4 Q. (BY MR. AIGEN) Were you there when Frank 5 provided this instruction to Kristin?</p> <p>6 A. I don't believe I was.</p> <p>7 Q. Then can I ask, how did you become aware that 8 Frank had given this instruction to Kristin?</p> <p>9 A. Through subsequent conversations with Frank 10 and Kristin. As I said before, I don't recall if it 11 was the three of us or me and Frank or me and Kristin. 12 But subsequent conversations.</p> <p>13 Q. Are we talking about conversations back in 14 2020 or after the bankruptcy?</p> <p>15 MR. MORRIS: Objection to the form of the 16 question.</p> <p>17 THE WITNESS: During 2020, December of 2020.</p> <p>18 Q. (BY MR. AIGEN) Sitting here today, can you 19 say with a hundred percent certainty that the 20 instruction related to all of the entities as opposed 21 to just Advisors?</p> <p>22 A. So as you pointed out, I was not party to the 23 direction, so I have no way of knowing with any sort of 24 specificity what the direction actually was. I just 25 know how it was conveyed to me and how I understood it.</p>	<p style="text-align: right;">104</p> <p>1 I want to throw out a term. Are you familiar 2 with the term "NAV ratio trigger period" as it was used 3 in --</p> <p>4 A. In a very, very general sense, yes.</p> <p>5 Q. And in a general sense what does that term 6 mean to you?</p> <p>7 A. It's a term I recognize from the limited 8 partnership agreement of HCMLP. It's a defined term in 9 that agreement.</p> <p>10 Q. To your knowledge, was the NAV ratio trigger 11 period ever reached or triggered prior to the Highland 12 bankruptcy?</p> <p>13 A. I don't know the definition, so I don't know 14 based on the definition whether it had or hadn't.</p> <p>15 Q. Sitting here today, though, it's not your 16 belief, based on your experience, that it was 17 triggered; is that fair to say?</p> <p>18 MR. MORRIS: Objection to the form of the 19 question.</p> <p>20 THE WITNESS: I don't know the consequence of 21 being in a trigger period, I guess is what -- how I'm 22 trying to answer your question.</p> <p>23 Q. (BY MR. AIGEN) Have you ever had any 24 conversations with Nancy Dondero?</p> <p>25 A. Yes.</p>

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<p style="text-align: right;">105</p> <p>1 Q. Generally, how many and what was the 2 reasoning? 3 A. Probably less than five. I think maybe only 4 one or two that I can really remember. 5 Q. At a high level what were those conversations 6 about? 7 A. From my recollection of my conversations with 8 her, they pertained to the DRIP, which is a dividend 9 reinvestment program that I helped. 10 Q. And approximately when were these 11 conversations? 12 A. I don't know. Sometime between 2017 and 13 probably 2019. I couldn't tell you with any 14 specificity. These were very informal. 15 Q. Fair to say that you've never had any 16 conversations with Nancy Dondero about any of the loans 17 at issue in this case? 18 A. No, no, no, I've never had a conversation 19 with her like that. 20 Q. And fair to say that you've never had any 21 conversations with Nancy Dondero about compensation for 22 Jim or any other officers at Highland? 23 A. Correct. 24 MR. AIGEN: Why don't we go off the record 25 for two minutes. I think I'm either done or about</p>	<p style="text-align: right;">107</p> <p>1 Can you just generally explain to me what 2 services Highland Capital Management provided for 3 HCMS and HCRE? 4 A. For HCMS -- I do need to separate these a 5 little bit. For HCMS, really full-service accounting, 6 tax, treasury, cash payments. I said tax. Valuation. 7 Nothing personnel-wise because they didn't have any 8 employees. 9 That's all I can think of right off the top 10 of my head, but I could be missing some. 11 Q. And what about HCRE? How is that different? 12 A. Similar, except different types of assets. 13 So more real estate, so less heavy. 14 Maybe not necessarily differences in terms of 15 the types of services, but services would have, I'd 16 say, more cash activity, more variety of investments, 17 which triggers different types of activities going on 18 at those entities. 19 But similar in terms of tax operations, 20 making payments. HCRE didn't have employees, so no 21 payroll. So these would be the broad areas that I 22 would think about. 23 Q. And you mentioned making payments. Would one 24 of those services that Highland provided for these two 25 entities include making loan payments on the term loans</p>
<p style="text-align: right;">106</p> <p>1 done. 2 (Off the record.) 3 Q. (BY MR. AIGEN) You understand you're still 4 under oath? 5 A. Yes. 6 Q. Are you aware of any loans that Highland has 7 made to any employees or officers that were forgiven in 8 all or in part? 9 A. Yes. 10 Q. Can you tell me who? 11 A. I don't know that this will be a complete 12 list, but there were a few employees in the kind of 13 late aughts, maybe 2010, 2011 frame. 14 Q. Do you know the names? 15 A. One was Jack Yang. Another, I'm not sure if 16 it was forgiven or not, that's why I'm hesitating, but 17 it was Tim Lawler. I think his was forgiven in part or 18 in full, but I'm not a hundred percent certain. 19 Q. And any other individuals that received loans 20 that were forgiven in part that you're aware of? 21 A. Not that I recall, but there could be others. 22 Some of this is very, very old. 23 Q. Changing topics here a little bit, I'm going 24 to combine two entities to try to speed this up. If 25 you need to separate, that's fine.</p>	<p style="text-align: right;">108</p> <p>1 like the term loans at issue in these proceedings? 2 MR. MORRIS: Objection to the form of the 3 question. 4 THE WITNESS: I think I mentioned before, I 5 couldn't remember whether or not Kristin was authorized 6 to make payments with respect to HCRE. I think she 7 probably was, but I don't know that with certainty. 8 But, you know, for services, certainly Kristin 9 and her team would be responsible for making those 10 payments, subject to the proper authorization. 11 Q. (BY MR. AIGEN) And I'm sorry if I asked this 12 before. If it wasn't Kristin for HCRE, do you have an 13 idea who it would have been? 14 A. If not Kristin, it would have been Melissa 15 Schroth. 16 Q. And how were those responsibilities split up? 17 What entities was Melissa Schroth responsible for? 18 A. Generally speaking, Melissa was more 19 responsible for entities that were really, like -- I'm 20 going to use this in the most general sense, like Jim 21 entities, Jim's trusts, Jim personally. 22 And for HCRE it was kind of in the middle. 23 When it started out it kind of was more Jim world and 24 then over time it got more complex. 25 And as entities got more complex over time</p>

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<p style="text-align: right;">109</p> <p>1 they tend to get transitioned from Melissa to corporate 2 accounting. And when they got really complex over to 3 another group of fund accountants. 4 So this is one that was, at its beginning, 5 Melissa was the, called primary accountant. And at 6 some point in time that transitioned to the corporate 7 accounting team. I can't remember when the cash 8 process kind of cut over. 9 Q. Is there a list somewhere saying Melissa is 10 responsible for these, Kristin for the others, or is it 11 just more of a pattern or matter of practice? 12 A. More of a matter of practice. If you're 13 responsible for an entity, you're responsible. If 14 you're not, then you're not. 15 MR. AIGEN: That's all the questions I have. 16 Thank you for your time. 17 THE WITNESS: Thank you. 18 EXAMINATION 19 Q. (BY MR. MORRIS) Just a few, Mr. Klos. Let's 20 pick up where Mr. Aigen left off. 21 To the best of your knowledge, did HCMS have 22 a shared services agreement with Highland? 23 A. No, it didn't that I'm aware of. 24 Q. But you described certain services that HCMLP 25 provided to HCMS; is that right?</p>	<p style="text-align: right;">111</p> <p>1 that was due at the end of the year? 2 A. Yes, we continued to track it through our 3 interest schedules and through cash. 4 Q. So in the debtor's books and records is there 5 any evidence that the payments that were made in early 6 2019 were intended to relieve NexPoint's obligation to 7 make the installment payment due at the end of the 8 year? 9 MR. RUKAVINA: Objection. Best evidence. 10 THE WITNESS: No, I don't believe so. 11 Q. (BY MR. MORRIS) Did you have a conversation 12 with anybody at any time in the year 2019 about whether 13 the payments made earlier in the year on behalf of 14 NexPoint would eliminate or suspend its obligation -- 15 withdrawn. 16 Did you have any conversation with anybody -- 17 I think I screwed up the dates. Going to have to start 18 over. 19 Let me ask better questions. 20 You looked with Mr. Rukavina at certain 21 payments that were made in early 2019 with respect to 22 the NexPoint note. 23 Do I have that right? 24 A. Yes. 25 Q. Notwithstanding those payments, did NexPoint</p>
<p style="text-align: right;">110</p> <p>1 A. Yes. 2 Q. Do you know whether HCMFA ever compensated -- 3 do you know whether HCMS ever compensated HCMLP for any 4 of those services that HCMLP provided? 5 A. No, it didn't. 6 Q. You mentioned HCRE. To the best of your 7 knowledge, did HCRE have a shared services agreement 8 with Highland Capital Management, LP? 9 A. No, it didn't. 10 Q. Did HCRE provide the services that -- 11 withdrawn. 12 Did HCMLP provide the services to HCRE that 13 you just described? 14 A. Yes. 15 Q. Did HCRE ever compensate HCMLP for any of the 16 services that HCMLP provided? 17 A. No. 18 Q. Okay. Mr. Rukavina asked you some questions 19 about payments that were made on the NexPoint loan in 20 the first half of 2019. 21 Do you remember that? 22 A. Yes, generally. 23 Q. Okay. Notwithstanding those payments, did 24 your group continue to carry on its books and records 25 NexPoint's obligation to make the installment payment</p>	<p style="text-align: right;">112</p> <p>1 make the installment payment that was due at the end of 2 2019? 3 MR. RUKAVINA: Objection. Calls for a legal 4 conclusion. 5 THE WITNESS: It did make the payment that 6 was due at the end of 2019. 7 Q. (BY MR. MORRIS) And the payment that it made 8 at the end of 2019, was that the annual installment 9 payment that was called for in the note itself? 10 MR. RUKAVINA: Objection. Legal conclusion. 11 THE WITNESS: Yes, it was a payment pursuant 12 to the note. 13 Q. (BY MR. MORRIS) Did anybody ever tell you at 14 any time prior to the commencement of this lawsuit that 15 any prior payment by or on behalf of NexPoint relieved 16 it of any obligation to pay the installment payment due 17 at the end of 2020? 18 A. No. 19 Q. And did in fact -- is it your understanding 20 that Mr. Dondero specifically authorized Highland to 21 effectuate a payment on NexPoint's behalf in mid 22 January 2021? 23 A. I don't have specific knowledge, but I know 24 that to have occurred. 25 Q. Okay. Did anybody ever tell you in 2021 --</p>

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<p style="text-align: right;">113</p> <p>1 withdrawn.</p> <p>2 Did anybody tell you in December 2020 or</p> <p>3 December -- or January 2021 that NexPoint didn't have</p> <p>4 to make the installment payment at year end 2020</p> <p>5 because of some prior prepayment?</p> <p>6 A. No.</p> <p>7 Q. Can you think of any reason -- withdrawn.</p> <p>8 Did you ever hear Mr. Dondero -- withdrawn.</p> <p>9 Did you ever see anything in writing where</p> <p>10 NexPoint ever contended, prior to February 1, 2021,</p> <p>11 that it had no obligation to make the payment due at</p> <p>12 the end of 2020 because of some prepayment issue?</p> <p>13 A. No, not that I remember.</p> <p>14 Q. Can you think of any reason why Mr. Dondero</p> <p>15 would have authorized a payment by NexPoint to HCMLP on</p> <p>16 account of the note in January of 2021 if he actually</p> <p>17 believed at that time that no obligation was due</p> <p>18 because of a prior prepayment?</p> <p>19 MR. RUKAVINA: Objection. Speculation, lacks</p> <p>20 foundation.</p> <p>21 THE WITNESS: No.</p> <p>22 Q. (BY MR. MORRIS) Does it make any sense to</p> <p>23 you as an accountant that you would pay a seven-figure</p> <p>24 sum of money that you didn't think was due and owing?</p> <p>25 A. No, that does not make sense to me.</p>	<p style="text-align: right;">115</p> <p>1 Q. And you sent it to the corporate accounting</p> <p>2 email group; is that right?</p> <p>3 A. I did.</p> <p>4 Q. And to the best of your recollection, was</p> <p>5 Mr. Waterhouse included in that email group?</p> <p>6 A. Yes, absolutely.</p> <p>7 Q. And did you instruct the corporate accounting</p> <p>8 team to transfer \$2.4 million from HCMLP to HCMFA on</p> <p>9 May 2, 2019?</p> <p>10 A. Yes, specifically Blair, but yes, for the</p> <p>11 team as well.</p> <p>12 Q. The whole team was aware of this?</p> <p>13 A. The whole team is on the email, and I'm</p> <p>14 sending to Blair, who is the AP person, to please set</p> <p>15 up the payment.</p> <p>16 Q. Is it fair to say that you're being</p> <p>17 completely transparent here by including the entire</p> <p>18 corporate accounting group on this email?</p> <p>19 A. Yes.</p> <p>20 Q. And did you tell the entire corporate</p> <p>21 accounting group that this transaction would be a,</p> <p>22 quote, new interco loan?</p> <p>23 A. Yes, that's what the email says.</p> <p>24 Q. Do you have any reason to believe that</p> <p>25 Mr. Waterhouse didn't get this?</p>
<p style="text-align: right;">114</p> <p>1 Q. Can you get Exhibit 13, please.</p> <p>2 A. Got it.</p> <p>3 Q. You were asked some questions about</p> <p>4 paragraph 3.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Does paragraph 3 mention annual installment</p> <p>8 payments at all?</p> <p>9 A. No, I'm not seeing it.</p> <p>10 Q. Does paragraph 3 state in any way that a</p> <p>11 prepayment as described in that paragraph would relieve</p> <p>12 the maker of the obligation to make annual installment</p> <p>13 payments?</p> <p>14 A. No.</p> <p>15 Q. Can you turn to the next page and look at</p> <p>16 paragraph 5.</p> <p>17 Are you familiar with that paragraph at all?</p> <p>18 A. No. I mean, I've seen it before, but this</p> <p>19 is, as I said before, this is a provision that probably</p> <p>20 would have been in most, if not all, of these types of</p> <p>21 notes.</p> <p>22 Q. Can you get Exhibit 3, please. This is your</p> <p>23 email dated May 2, 2019.</p> <p>24 Do I have that right?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">116</p> <p>1 A. No, he got this.</p> <p>2 Q. And did Mr. Waterhouse tell you at any time</p> <p>3 in the history of the world that this \$2.4 million</p> <p>4 should not have been booked as a loan?</p> <p>5 A. No.</p> <p>6 Q. Did Mr. Dondero tell you at any moment in the</p> <p>7 history of the world that this transaction should not</p> <p>8 have been booked as a loan?</p> <p>9 A. No.</p> <p>10 Q. You mentioned that there was an audit that</p> <p>11 followed shortly thereafter?</p> <p>12 A. Yes.</p> <p>13 Q. Are you familiar with the debtor's audited</p> <p>14 financial statements for the period ending 2018?</p> <p>15 A. Yes, generally. Not total recall, but yes.</p> <p>16 Q. Are you aware that this loan was included as</p> <p>17 a subsequent event in the debtor's audited financial</p> <p>18 statements?</p> <p>19 A. Yes.</p> <p>20 MR. RUKAVINA: Objection. Best evidence.</p> <p>21 Q. (BY MR. MORRIS) Did Mr. Dondero or</p> <p>22 Mr. Waterhouse or anybody ever tell you that the debtor</p> <p>23 should not have included this \$2.4 million loan in its</p> <p>24 audited financial statements?</p> <p>25 MR. RUKAVINA: Objection. Best evidence.</p>

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<p style="text-align: right;">117</p> <p>1 THE WITNESS: No.</p> <p>2 Q. (BY MR. MORRIS) Okay. And the next day</p> <p>3 there was another loan; right?</p> <p>4 A. Yes.</p> <p>5 Q. I'm going to show you here a document that's</p> <p>6 been produced.</p> <p>7 MR. RUKAVINA: Would you email it to me and I</p> <p>8 can print it out for the court reporter.</p> <p>9 MR. MORRIS: You want to come over here and</p> <p>10 look --</p> <p>11 MR. RUKAVINA: I know it. I'm just thinking</p> <p>12 that we can append it to the record right now.</p> <p>13 MR. MORRIS: It's eight pages, so it's part</p> <p>14 of a whole production.</p> <p>15 MR. RUKAVINA: But it's just one email?</p> <p>16 MR. MORRIS: Just one email that I'm talking</p> <p>17 about. So we're looking at Bates stamp D-CNL003763.</p> <p>18 And I'll email it to you when we're done here.</p> <p>19 And you're welcome to come over here if you'd like to</p> <p>20 see it.</p> <p>21 Q. (BY MR. MORRIS) Mr. Klos, can you take a</p> <p>22 look at the email that I have on my screen.</p> <p>23 A. Yes.</p> <p>24 Q. And do you see that it's an email from</p> <p>25 Kristin Hendrix to the corporate accounting group on</p>	<p style="text-align: right;">119</p> <p>1 A. No.</p> <p>2 Q. Did anybody in the history of the world ever</p> <p>3 raise a question to you as to whether or not Kristin</p> <p>4 was authorized to paper the loan, as she describes it</p> <p>5 in this particular email?</p> <p>6 A. No.</p> <p>7 Q. Do you know if this \$5 million loan was also</p> <p>8 included in the debtor's audited financial statements?</p> <p>9 MR. RUKAVINA: Objection. Best evidence.</p> <p>10 THE WITNESS: Yes. Again, subsequent event.</p> <p>11 Q. (BY MR. MORRIS) Okay. And did anybody in</p> <p>12 the history of the world ever tell you that Highland</p> <p>13 should not have included as a subsequent event in its</p> <p>14 2018 audited financial statement this \$5 million loan?</p> <p>15 A. No.</p> <p>16 MR. RUKAVINA: Objection. Best evidence.</p> <p>17 THE WITNESS: No.</p> <p>18 Q. (BY MR. MORRIS) Do you know if HCMFA had its</p> <p>19 financial statements audited?</p> <p>20 A. It did.</p> <p>21 Q. And are you generally familiar with those</p> <p>22 financial statements?</p> <p>23 A. Yes.</p> <p>24 Q. Are you aware that these two loans totaling</p> <p>25 \$7.4 million were included in HCMFA's audited financial</p>
<p style="text-align: right;">118</p> <p>1 Friday, May 3?</p> <p>2 A. Yes.</p> <p>3 Q. And were you also included in the corporate</p> <p>4 accounting email string?</p> <p>5 A. Yes.</p> <p>6 Q. Can you read the email out loud, please.</p> <p>7 A. It says, Blair, please set up a wire from</p> <p>8 HCMLP to HCMFA for 5 million as a new loan,</p> <p>9 parentheses, 4.4 million should be coming in from Jim</p> <p>10 soon. Hayley, please add this to your loan tracker. I</p> <p>11 will paper the loan.</p> <p>12 Q. So based on that email, did you understand on</p> <p>13 May 3 that HCMLP was going to loan \$5 million to HCMFA?</p> <p>14 A. Yes, HCMFA.</p> <p>15 Q. And did you understand that Kristin</p> <p>16 specifically told the corporate accounting group that</p> <p>17 she would take responsibility for papering the loan?</p> <p>18 A. Yes, that's what she says.</p> <p>19 Q. Do you recall whether Mr. Waterhouse ever</p> <p>20 objected to any aspect of Kristin's email?</p> <p>21 A. He didn't.</p> <p>22 Q. Do you recall in the history of the world</p> <p>23 whether Mr. Waterhouse ever told you that this</p> <p>24 \$5 million transaction should not have been booked as a</p> <p>25 loan?</p>	<p style="text-align: right;">120</p> <p>1 statements as a subsequent event for the period ended</p> <p>2 December 31, 2018?</p> <p>3 A. Yes.</p> <p>4 MR. RUKAVINA: Objection. Best evidence.</p> <p>5 Q. (BY MR. MORRIS) Did anybody in the history</p> <p>6 of the world ever tell you that HCMFA should not have</p> <p>7 included as a subsequent event the borrowing of the</p> <p>8 money reflected in these loans?</p> <p>9 MR. RUKAVINA: Objection. Best evidence.</p> <p>10 THE WITNESS: No, no one said that.</p> <p>11 Q. (BY MR. MORRIS) Do you know if HCMFA</p> <p>12 included these loans as a liability on its balance</p> <p>13 sheet?</p> <p>14 A. It did.</p> <p>15 MR. RUKAVINA: Objection. Move to strike.</p> <p>16 Best evidence.</p> <p>17 Q. (BY MR. MORRIS) Did anyone in the history of</p> <p>18 the world ever tell you that HCMFA should not have</p> <p>19 included these loans as a liability on its balance</p> <p>20 sheet?</p> <p>21 MR. RUKAVINA: Objection. Best evidence.</p> <p>22 THE WITNESS: No.</p> <p>23 Q. (BY MR. MORRIS) Okay. Do you recall that in</p> <p>24 October of 2020 HCMFA and NexPoint made a report to the</p> <p>25 retail board?</p>

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<p style="text-align: right;">121</p> <p>1 A. Yes.</p> <p>2 Q. And are you aware that that's part of the</p> <p>3 annual review process?</p> <p>4 A. Yes, it's the 15(c) process.</p> <p>5 Q. By the way, as we're talking about these</p> <p>6 issues, did Mr. Waterhouse have -- was he an officer of</p> <p>7 HCMFA in 2019 and 2020?</p> <p>8 A. Yes.</p> <p>9 Q. And what's your understanding as to the</p> <p>10 office he held?</p> <p>11 A. Treasurer, I believe.</p> <p>12 Q. And do you know if Mr. Dondero held an</p> <p>13 officer position with respect to each of the Advisors?</p> <p>14 A. He did.</p> <p>15 Q. What position did he hold?</p> <p>16 A. I don't recall with certainty, but I believe</p> <p>17 president.</p> <p>18 Q. As officers of those two entities, do you</p> <p>19 have any knowledge as to whether they participated in</p> <p>20 the communications with the retail board in the fall of</p> <p>21 2020?</p> <p>22 A. I believe Jim and Frank both did.</p> <p>23 Q. And do you know whether the retail board</p> <p>24 asked the Advisors for a report on all obligations due</p> <p>25 and owing to HCMLP and affiliates?</p>	<p style="text-align: right;">123</p> <p>1 A. Not that I'm aware of.</p> <p>2 Q. You referred to a couple of loans that were</p> <p>3 given to individuals earlier.</p> <p>4 Do you remember that?</p> <p>5 A. Yes.</p> <p>6 Q. What's the biggest loan that you can recall</p> <p>7 Highland ever forgiving?</p> <p>8 A. The largest one that I can remember was</p> <p>9 a half-million dollars, 500,000.</p> <p>10 Q. So you have no knowledge of any loan ever</p> <p>11 being forgiven where the principal amount forgiven</p> <p>12 exceeded \$500,000; is that right?</p> <p>13 A. Not that I'm aware of.</p> <p>14 Q. And when is the last loan that Highland</p> <p>15 forgave in whole or in part to one of its officers or</p> <p>16 employees that you can recall?</p> <p>17 A. I don't know a specific year, but it would</p> <p>18 have been in the 2010, 2011 time frame. Maybe 2012,</p> <p>19 but I suspect '10 or '11.</p> <p>20 Q. So is it fair to say to the best of your</p> <p>21 recollection and knowledge that Highland did not</p> <p>22 forgive a single loan made to an officer or employee</p> <p>23 for at least seven years prior to the petition date?</p> <p>24 A. There's none that I can think of.</p> <p>25 Q. Let's just turn our attention to</p>
<p style="text-align: right;">122</p> <p>1 A. They asked for financials, I believe as of</p> <p>2 6/30 as part of that process.</p> <p>3 Q. And are you aware as to whether or not the</p> <p>4 financials that were provided to the retail board</p> <p>5 included, among other things, the \$7.4 million in notes</p> <p>6 that were -- that we're talking about here?</p> <p>7 A. Yes, those financials would have included</p> <p>8 those amounts as liabilities to HCMLP.</p> <p>9 Q. Did Mr. Dondero or Mr. Waterhouse ever tell</p> <p>10 you or anybody to your knowledge that the Advisors</p> <p>11 should not have told the retail boards that they were</p> <p>12 obligated to pay under those two notes?</p> <p>13 A. No.</p> <p>14 Q. Let's talk about loan forgiveness for a</p> <p>15 moment.</p> <p>16 How long have you been with the company?</p> <p>17 A. March of 2009.</p> <p>18 Q. At any time since you've been employed by</p> <p>19 Highland, has Highland ever forgiven a promissory note</p> <p>20 that it held where the maker was a corporate affiliate?</p> <p>21 A. Not that I can recall.</p> <p>22 Q. Have you ever heard prior -- has anybody ever</p> <p>23 told you that before you joined the company, Highland</p> <p>24 had ever forgiven in whole or in part any note that it</p> <p>25 held where the maker was a corporate affiliate?</p>	<p style="text-align: right;">124</p> <p>1 December 2020.</p> <p>2 Do you recall that you testified at length</p> <p>3 about your understanding of the conversations with</p> <p>4 Mr. Waterhouse and Ms. Hendrix?</p> <p>5 Do you remember that?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Are you aware of any instruction ever</p> <p>8 made by Mr. Dondero or Mr. Waterhouse in November or</p> <p>9 December 2020 in order to make the payments that were</p> <p>10 due under the three term notes -- withdrawn.</p> <p>11 There were three term notes that were due --</p> <p>12 withdrawn.</p> <p>13 There are three term notes at issue in this</p> <p>14 case. Do you understand that?</p> <p>15 A. Yeah, that's my understanding.</p> <p>16 Q. And one of them was issued by NexBank; is</p> <p>17 that right?</p> <p>18 A. NexPoint Advisors.</p> <p>19 Q. Thank you for the clarification.</p> <p>20 One was by HCRE?</p> <p>21 A. Correct.</p> <p>22 Q. And one was from HCMS; do I have that right?</p> <p>23 A. Yes.</p> <p>24 Q. And all three of those notes were executed as</p> <p>25 of May 31, 2017; right?</p>

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<p style="text-align: right;">125</p> <p>1 A. Yeah, that was the effective date on all</p> <p>2 three.</p> <p>3 Q. And they all rolled up previously outstanding</p> <p>4 notes that were due and payable to Highland.</p> <p>5 Do I have that right?</p> <p>6 A. Correct. To the best of my recollection.</p> <p>7 Q. So we'll refer to those notes as the term</p> <p>8 notes. Is that okay?</p> <p>9 A. Sure.</p> <p>10 Q. Do you have any knowledge that Mr. Dondero or</p> <p>11 Mr. Waterhouse ever instructed HCMLP to make the</p> <p>12 installment payments that were due at the end of 2020</p> <p>13 with respect to any of those term notes?</p> <p>14 A. No, I don't believe they provided that</p> <p>15 instruction to make those payments.</p> <p>16 MR. RUKAVINA: Objection. Move to strike.</p> <p>17 Lacks foundation.</p> <p>18 MR. MORRIS: I'm asking him if he ever heard.</p> <p>19 MR. RUKAVINA: But he answered a different</p> <p>20 question. He answered a different question.</p> <p>21 Q. (BY MR. MORRIS) Did you ever see anything in</p> <p>22 writing where either Mr. Dondero or Mr. Waterhouse</p> <p>23 directed HCMLP to make the annual installment payments</p> <p>24 that were due at the end of 2020 with respect to any of</p> <p>25 the term notes?</p>	<p style="text-align: right;">127</p> <p>1 FURTHER EXAMINATION</p> <p>2 Q. (BY MR. RUKAVINA) Go to Exhibit 16, please,</p> <p>3 1-6.</p> <p>4 A. Sure.</p> <p>5 Q. Sir, this is an email string regarding that</p> <p>6 Rule 15(c) that you were talking about. I'm just going</p> <p>7 to ask you about the top email, but you're welcome to</p> <p>8 read the whole.</p> <p>9 A. Uh-huh.</p> <p>10 Q. You're copied on Mr. Waterhouse's email there</p> <p>11 October 6, 2020; right?</p> <p>12 A. Yes, I'm on the email.</p> <p>13 Q. And Mr. Waterhouse writes, the HCMFA note is</p> <p>14 a demand note. You would have read that; right?</p> <p>15 A. Yes.</p> <p>16 Q. Did you ever correct Mr. Waterhouse when he</p> <p>17 says the HCMFA note, as opposed to notes?</p> <p>18 A. No, that's not something I would have</p> <p>19 corrected from Frank.</p> <p>20 Q. Do you recall right now that you might have,</p> <p>21 when you read this, realized that he made a mistake?</p> <p>22 A. It would have been such a de minimus,</p> <p>23 inconsequential mistake that I don't know that I would</p> <p>24 have addressed it.</p> <p>25 Q. What about two sentences over, there was an</p>
<p style="text-align: right;">126</p> <p>1 A. No.</p> <p>2 Q. Okay. But to the best of your recollection,</p> <p>3 in the 13-week forecast, those forecasts included the</p> <p>4 installment payments that were due at the end of the</p> <p>5 year; is that right?</p> <p>6 A. They did.</p> <p>7 Q. Did anybody ever tell you prior to</p> <p>8 February 1, 2021, that your group had made a mistake by</p> <p>9 not making the payment -- any of the payments that were</p> <p>10 due under the term notes at the end of 2020?</p> <p>11 A. Not that I'm aware of.</p> <p>12 Q. Did anybody tell you prior to February 1,</p> <p>13 2021, that the makers of the term notes expected</p> <p>14 Highland to effectuate the payments that were due at</p> <p>15 the end of the year without approval by Mr. Waterhouse</p> <p>16 or Mr. Dondero?</p> <p>17 A. No.</p> <p>18 Q. Have you seen any protest in writing prior to</p> <p>19 the commencement of the litigation by any of the makers</p> <p>20 of the notes about a failure on the part of HCMLP to</p> <p>21 perform its duties and make that payment at the end of</p> <p>22 the year?</p> <p>23 A. No.</p> <p>24 MR. MORRIS: I have no further questions.</p> <p>25 MR. RUKAVINA: I have five minutes.</p>	<p style="text-align: right;">128</p> <p>1 agreement between HCMLP and HCMFA the earliest they</p> <p>2 could demand is May 2021.</p> <p>3 Did you ever write to him and say that too</p> <p>4 was a mistake?</p> <p>5 A. I didn't write to him.</p> <p>6 Q. Did you realize back then when you read it</p> <p>7 that he had made a mistake?</p> <p>8 A. I'm not certain.</p> <p>9 Q. Did you -- and I'm not suggesting that you</p> <p>10 should have. You're a busy man. But did you attach</p> <p>11 any significance outside of the ordinary to this email</p> <p>12 exchange?</p> <p>13 MR. MORRIS: Objection to the form of the</p> <p>14 question.</p> <p>15 THE WITNESS: I struggle with how to answer</p> <p>16 that. I saw that this note was in response to retail</p> <p>17 15(c) follow-up on the Advisors.</p> <p>18 At this point my role was different, where I</p> <p>19 was dealing with really the retail funds primarily. So</p> <p>20 the fact that I'm even on this email is somewhat</p> <p>21 incidental.</p> <p>22 Q. (BY MR. RUKAVINA) But surely on October 6,</p> <p>23 2020 you knew that there were four HCMFA demand notes,</p> <p>24 didn't you?</p> <p>25 A. I'm sure I would have had access to that</p>

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<p style="text-align: right;">129</p> <p>1 information. I'm not sure that I was keeping track of</p> <p>2 how many were outstanding at any given point in time.</p> <p>3 Q. And surely on October 6, 2020 you knew that</p> <p>4 only two of them couldn't be demanded by May of 2021,</p> <p>5 didn't you?</p> <p>6 A. Again, I don't know that I was even really</p> <p>7 thinking about these notes at that time.</p> <p>8 Q. Even though you were preparing weekly cash</p> <p>9 forecasts for Mr. Seery?</p> <p>10 A. I wasn't preparing a weekly cash forecast for</p> <p>11 Mr. Seery.</p> <p>12 Q. Going to Exhibit 13, please. Mr. Morris</p> <p>13 asked you a couple questions about this.</p> <p>14 A. I'm sorry, 13?</p> <p>15 Q. Yes, sir. And again, that paragraph 3 that</p> <p>16 talks about prepayment.</p> <p>17 Can you find anything in here, sir, that says</p> <p>18 that a prepayment does not relieve the maker of any</p> <p>19 regularly scheduled payment?</p> <p>20 A. Sorry, that's a lot to comprehend. If you</p> <p>21 could ask again.</p> <p>22 Q. Is there any provision that you can see here</p> <p>23 that's to the effect that a prepayment will not relieve</p> <p>24 the maker of any regularly scheduled payment?</p> <p>25 A. I don't see that specific provision. I just</p>	<p style="text-align: right;">131</p> <p>1 Q. And Mr. Morris asked you whether you see</p> <p>2 anything in here that says that a prepayment relieves</p> <p>3 an annual installment.</p> <p>4 Do you remember that question?</p> <p>5 MR. MORRIS: Objection. That's not what I</p> <p>6 asked.</p> <p>7 THE WITNESS: I don't remember that question.</p> <p>8 Q. (BY MR. RUKAVINA) Reading Section 2.1 and 3</p> <p>9 together, what would a prepayment apply to other than</p> <p>10 an annual installment? Do you have a view on that?</p> <p>11 MR. MORRIS: Objection to the form of the</p> <p>12 question.</p> <p>13 THE WITNESS: Again, I struggle with</p> <p>14 prepayment. But as I read Section 3, it would be</p> <p>15 applied first to unpaid accrued interest and then to</p> <p>16 unpaid principal.</p> <p>17 Q. (BY MR. RUKAVINA) Have you ever in your</p> <p>18 personal life prepaid a promissory note before -- have</p> <p>19 you ever in your personal life prepaid a promissory</p> <p>20 note prior to its maturity?</p> <p>21 MR. MORRIS: Objection to the form of the</p> <p>22 question.</p> <p>23 THE WITNESS: I don't know.</p> <p>24 Q. (BY MR. RUKAVINA) Sitting here today, with</p> <p>25 your CPA, your MBA and you're a CFO of a large entity,</p>
<p style="text-align: right;">130</p> <p>1 read it for what is on the page.</p> <p>2 Q. Isn't it, sir, in your experience the case</p> <p>3 that a promissory note, if it intended not to relieve</p> <p>4 the borrower of regularly scheduled payments would say</p> <p>5 that a prepayment does not relieve the borrower of</p> <p>6 regularly scheduled payments?</p> <p>7 MR. MORRIS: Objection to the form of the</p> <p>8 question.</p> <p>9 THE WITNESS: That's a legal question. I</p> <p>10 can't -- I don't know the answer.</p> <p>11 Q. (BY MR. RUKAVINA) Do you remember seeing</p> <p>12 promissory notes that say something like that?</p> <p>13 A. Not that I can recall.</p> <p>14 Q. You'd be surprised if that's what promissory</p> <p>15 notes say?</p> <p>16 MR. MORRIS: Objection to the form of the</p> <p>17 question.</p> <p>18 THE WITNESS: I don't know.</p> <p>19 Q. (BY MR. RUKAVINA) And Mr. Morris asked you</p> <p>20 about this. I'm trying to burn through this so the man</p> <p>21 can make his plane.</p> <p>22 Section 2.1 talks about 30 equal annual</p> <p>23 payments, annual installments.</p> <p>24 You see that?</p> <p>25 A. Yes, I see that.</p>	<p style="text-align: right;">132</p> <p>1 you don't understand what a prepayment means?</p> <p>2 MR. MORRIS: Objection. Argumentative.</p> <p>3 I direct you not to answer.</p> <p>4 You're going to have ask a different question.</p> <p>5 That's an argumentative question and it's insulting.</p> <p>6 MR. RUKAVINA: What's the privilege on which</p> <p>7 you're directing him not to answer?</p> <p>8 MR. MORRIS: I just said it's argumentative.</p> <p>9 MR. RUKAVINA: I'm trying to let you get to</p> <p>10 your flight.</p> <p>11 MR. MORRIS: Ask a proper question. Don't</p> <p>12 make this about me.</p> <p>13 Q. (BY MR. RUKAVINA) You were going to answer</p> <p>14 my question, sir?</p> <p>15 MR. MORRIS: No, I'm directing him not to</p> <p>16 answer.</p> <p>17 MR. RUKAVINA: Then we'll end this deposition</p> <p>18 with a motion to compel.</p> <p>19 MR. MORRIS: Okay. You do that.</p> <p>20 MR. RUKAVINA: I'm making a motion to compel.</p> <p>21 We'll call the judge as soon as we land in New York</p> <p>22 tomorrow.</p> <p>23 MR. MORRIS: You have to read the whole</p> <p>24 question. You can ask the question without the</p> <p>25 verbiage; right?</p>

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<p style="text-align: right;">133</p> <p>1 MR. RUKAVINA: And I asked you on the basis</p> <p>2 of what privilege are you instructing your --</p> <p>3 MR. MORRIS: Argumentative.</p> <p>4 MR. RUKAVINA: That's not a privilege.</p> <p>5 MR. MORRIS: Sir, you can rephrase your</p> <p>6 question and end this right now by not being insulting</p> <p>7 to my client.</p> <p>8 Q. (BY MR. RUKAVINA) I was not trying to be</p> <p>9 insulting, sir.</p> <p>10 I'm asking you again, you do not, sitting</p> <p>11 here today, have an understanding of what the word</p> <p>12 "prepayment" for a promissory note means?</p> <p>13 MR. MORRIS: Objection to the form of the</p> <p>14 question.</p> <p>15 You can answer that one.</p> <p>16 THE WITNESS: In the context that you're</p> <p>17 asking the question --</p> <p>18 Q. (BY MR. RUKAVINA) No, I'm not asking any</p> <p>19 context. Sitting here today, do you have an</p> <p>20 understanding of what the word "prepayment" means when</p> <p>21 it comes to a borrower/lender relationship?</p> <p>22 MR. MORRIS: Objection to the form of the</p> <p>23 question.</p> <p>24 THE WITNESS: Yes, I have a general</p> <p>25 understanding.</p>	<p style="text-align: right;">135</p> <p>1 payment made prior to the time that it's due?</p> <p>2 MR. MORRIS: Objection to the form of the</p> <p>3 question.</p> <p>4 THE WITNESS: Yes, in the most general sense</p> <p>5 a prepayment, the prefix "pre" indicates that it's</p> <p>6 before some other event. So from that standpoint,</p> <p>7 prepayment means it was to some extent paid early.</p> <p>8 MR. RUKAVINA: Thank you.</p> <p>9 Pass the witness.</p> <p>10 MR. MORRIS: No further questions.</p> <p>11 Michael?</p> <p>12 MR. AIGEN: No questions.</p> <p>13 THE REPORTER: Mr. Morris, do you want a copy</p> <p>14 of the transcript?</p> <p>15 MR. MORRIS: I sure do.</p> <p>16 THE REPORTER: Mr. Aigen, do you want a copy</p> <p>17 of the transcript?</p> <p>18 MR. AIGEN: Yes, we would also like a copy.</p> <p>19 MR. MORRIS: Yeah, and I'd like that rush.</p> <p>20 (Whereupon, the deposition adjourned at</p> <p>21 5:14 P.M.)</p> <p>22 --oOo--</p> <p>23 I declare under penalty of perjury that the</p> <p>24 foregoing is true and correct. Subscribed at</p> <p>25 _____, Texas, this ____ day of</p>
<p style="text-align: right;">134</p> <p>1 Q. (BY MR. RUKAVINA) What is your</p> <p>2 understanding?</p> <p>3 A. That -- you can look at the note.</p> <p>4 Q. I'm not asking about the note. We got to go</p> <p>5 step by step.</p> <p>6 What is your general understanding as to what</p> <p>7 a prepayment means?</p> <p>8 MR. MORRIS: Objection to the form of the</p> <p>9 question.</p> <p>10 THE WITNESS: It depends on the context and</p> <p>11 it's going to depend on what the note says about</p> <p>12 prepayments. So I have a hard time answering that</p> <p>13 question.</p> <p>14 Q. (BY MR. RUKAVINA) So you would agree with me</p> <p>15 that you have to look at the note before you can answer</p> <p>16 that question?</p> <p>17 MR. MORRIS: Objection to the form of the</p> <p>18 question.</p> <p>19 THE WITNESS: I would want to look at the</p> <p>20 note before I answer the question, because prepayment</p> <p>21 is a term that can be used as a defined term or in a</p> <p>22 casual sense, and those two can sometimes get confused</p> <p>23 and misconstrued.</p> <p>24 Q. (BY MR. RUKAVINA) Would you agree with me</p> <p>25 that in any and all circumstances a prepayment is a</p>	<p style="text-align: right;">136</p> <p>1 _____, 2021.</p> <p>2</p> <p>3</p> <p>4 _____</p> <p>5 DAVID KLOS</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<p style="text-align: right;">137</p> <p>1 CERTIFICATE OF REPORTER</p> <p>2 I, BRANDON D. COMBS, a Certified Shorthand</p> <p>3 Reporter, hereby certify that the witness in the</p> <p>4 foregoing deposition was by me duly sworn to tell the</p> <p>5 truth, the whole truth, and nothing but the truth in the</p> <p>6 within-entitled cause;</p> <p>7 That said deposition was taken in shorthand by</p> <p>8 me, a disinterested person, at the time and place</p> <p>9 therein stated, and that the testimony of the said</p> <p>10 witness was thereafter reduced to typewriting, by</p> <p>11 computer, under my direction and supervision;</p> <p>12 That before completion of the deposition,</p> <p>13 review of the transcript was not requested. If</p> <p>14 requested, any changes made by the deponent (and</p> <p>15 provided to the reporter) during the period allowed are</p> <p>16 appended hereto.</p> <p>17 I further certify that I am not of counsel or</p> <p>18 attorney for either or any of the parties to the said</p> <p>19 deposition, nor in any way interested in the event of</p> <p>20 this cause, and that I am not related to any of the</p> <p>21 parties thereto.</p> <p>22 DATED: November 1, 2021</p> <p>23</p> <p>24 _____</p> <p>25 Brandon Combs, Certified Shorthand</p>	
<p style="text-align: right;">138</p> <p>1 State of Texas</p> <p>2 Dickman Davenport, Inc. Cert 312</p> <p>3 4228 North Central Expressway</p> <p>4 Suite 101, Dallas, TX 75206</p> <p>5 (214) 855-5100 (800) 445-9548</p> <p>6 Email: info@dickmandavenport.com</p> <p>7 www.dickmandavenport.com</p> <p>8 My commission expires 1-31-23</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	

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600,000 76:6,7 630,000 28:14 66,000 46:7 49:4 49:5,7 <hr/> 7 <hr/> 7 58:11,15 7.4 75:9 78:22 79:12 89:2 90:17,20,22,24 119:25 122:5 7.4 89:19 91:13 75 18:1 750,000 28:13 37:6 75201 2:4 75206 138:2 75219 2:18 777 2:17 780 2:10 <hr/> 8 <hr/> 80 15:25 800 138:3 855-5100 138:3 <hr/> 9 <hr/> 9 19:5 95 3:4				
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EXHIBIT 199

Loan Summary		
HCMLP to HCMSI (GL 14530) - Outstanding Loans	Date	Principal Amount
HCMSI Restructure	5/31/2017	6,572,061
HCMSI #46	3/26/2018	158,777
HCMSI #47	6/25/2018	212,403
HCMSI #48	5/29/2019	409,586
HCMSI #49	6/26/2019	153,565
BW Salary Recievable	12/31/2019	12,301
	Sub-total	7,518,692
Total HCMSI Debt to HCM Outstanding		7,518,692
Total HCMSI Debt per GL		7,518,692
	Reconciled Total	7,518,692
	Unreconciled Difference	-
HCMLP to HCMFA (GL 14531) - Outstanding Loans	Date	Principal Amount
HCMFA #2	2/26/2014	2,092,825
HCMFA #5	2/26/2016	965,395
HCMFA #6	5/2/2019	2,457,517
HCMFA #7	5/3/2019	5,119,827
	Sub-total	10,635,564
Total HCMFA Debt to HCM Outstanding		10,635,564
Total HCMFA Debt per GL		10,635,564
	Reconciled Total	10,635,564.44
	Unreconciled Difference	-
HCMLP to NexPoint Advisors (GL 14532) - Outstanding Loans	Date	Principal Amount
NexPoint Restructure	5/31/2017	23,034,644
	Sub-total	23,034,644
Total NexPoint Debt to HCM Outstanding		23,034,644
Total NexPoint Debt per GL		23,034,644
	Reconciled Total	23,034,644
	Unreconciled Difference	0.00
HCMLP to HCRE (GL 14533) - Outstanding Loans	Date	Principal Amount
HCRE #9	11/27/2013	-
HCRE Restructure	5/31/2017	5,829,776
HCRE #10	10/12/2017	3,149,919
HCRE #11	10/15/2018	874,978
HCRE #12	9/25/2019	750,279
	Sub-total	10,604,952
Total HCRE Debt to HCM Outstanding		10,604,952
Total HCRE Debt per GL		10,604,952
	Reconciling Items Compound Interest	-
	Reconciled Total	10,604,951.61
	Unreconciled Difference	0.01
HCMLP Partner Tax Loans (GL 14565) - Outstanding Loans	Date	Principal Amount
Dondero #4	2/2/2018	3,687,270
Dondero #5	8/1/2018	2,619,929
Dondero #6	8/13/2018	2,622,426
	Sub-total	8,929,625
Total Partner Debt to HCM Outstanding		8,929,625
Total Partner Debt per GL		8,929,625
Reconciling Items		
	Reconciled Total	8,929,624.74
	Unreconciled Difference	-
Get Good Loan (GL 14750) - Outstanding Loans	Date	Principal Amount
Dugaboy Restructure	5/31/2017	18,286,268
	Sub-total	18,286,268
Total Partner Debt to HCM Outstanding		18,286,268
Total Partner Debt per GL		18,286,268
Reconciling Items		
	Reconciled Total	18,286,268.16
	Unreconciled Difference	-

EXHIBIT 210

Defendants.

§ § § § § § § § § §

Case No. 3:21-cv-01379-X

A. NexPoint Advisors, LP's ("NexPoint") Prepayment Defense

3. I understand that NexPoint contends that it had no obligation to make the Annual Installment payment due on December 31, 2020 under the NexPoint Note because it “pre-paid.” Two documents show that NexPoint is mistaken.

4. The first document is the NexPoint Note, a true and correct copy of which is attached hereto as **Exhibit A**.² Under the NexPoint Note, NexPoint was required to make “Annual Installment” payments on December 31 of each year equal to (i) all unpaid accrued interest, *plus* (ii) 1/30th of the outstanding principal amount of the NexPoint Note. **Exhibit A ¶2.1.**

5. NexPoint was permitted to make “prepayments” under the NexPoint Note. Section 3 of the NexPoint Note sets forth NexPoint’s agreement concerning the treatment of “prepayments” and provides:

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. **Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.**

Exhibit A ¶ 3 (emphasis added).

6. The second relevant document is an amortization schedule (the “Amortization Schedule”) that was prepared and maintained in the ordinary course of Highland’s business, a true and correct copy of which is attached hereto as **Exhibit B**.³ I understand that the Amortization Schedule is the only document that NexPoint relies upon to support its “prepayment defense.”

7. The Amortization Schedule shows, among other things, the following:

² The NexPoint Note is also included as Highland’s Ex. 2 (Exhibit 1),

³ The Amortization Schedule is also included as Highland’s Ex. 200.

- The “Interest Accrual” column shows the periodic interest that accrued under the NexPoint Note between the dates described in the “Date” column;
- The “Total Paid” column shows the amount NexPoint paid against the NexPoint Note⁴; and
- The “Interest Paid” and “Principal Paid” columns show how each payment was applied.

8. As the Amortization Schedule shows, (a) between October 20, 2017 and August 13, 2019, NexPoint made twelve (12) payments that could broadly be characterized as unscheduled “prepayments” of principal and/or interest (the “Prepayments”)⁵, and (b) with one exception, each of the Prepayments was applied first to reduce or eliminate all accrued and outstanding interest and then to unpaid principal, as required by Section 3 of the NexPoint Note.⁶

9. As can also be seen on the Amortization Schedule, *notwithstanding the Prepayments*, NexPoint was still required to make additional payments against the NexPoint Note in December of 2017, 2018, and 2019, in order to reduce “Accrued Interest” to \$0 as of December 31 in each year⁷ as required by Section 2.1 of the NexPoint Note, which it did in each instance.

10. Indeed, even though NexPoint made six (6) Prepayments totaling \$6.38 million between March 29 and August 13, 2019, NexPoint was still required to pay \$530,112.36 to fully

⁴ Note that for the interest payment made December 30, 2019, interest of \$530,112.36 was paid in cash and is reflected on the “Interest Paid” column. The amount is omitted from the “Total Paid” column but has no bearing on the actual calculations contained in the Amortization Schedule. For avoidance of doubt, \$530,112.36 of interest was paid to Highland from NexPoint on December 30, 2019.

⁵ For the avoidance of doubt, NexPoint made the Prepayments on October 20, 2017, April 10, 2018, May 1, 2018, May 9, 2018, September 5, 2019, September 21, 2019, March 29, 2019, April 16, 2019, June 4, 2019, June 19, 2019, July 9, 2019, and August 13, 2019. *See generally* Ex. B.

⁶ The exception is the Prepayment made on May 9, 2018, which prepaid approximately six (6) months of future interest.

⁷ NexPoint made payments against the NexPoint Note on December 5, 2017, December 18, 2018, and December 30, 2019, respectively, which reduced “Accrued Interest” to \$0 as of December 31 in each of those years in order to comply with Section 2.1 of the NexPoint Note.

satisfy its obligation to make the unpaid interest portion of the Annual Installment payment due as of December 31, 2019, which it did.

11. As the Amortization Schedule shows, NexPoint did not make any Prepayments on account of the NexPoint Note in 2020. Thus, as of December 31, 2020, NexPoint was required to make an Annual Installment payment on December 31 equal to (i) all unpaid accrued interest, *plus* (ii) 1/30th of the outstanding principal amount of the NexPoint Note (the “2020 Annual Installment”). Exhibit A ¶2.1.

12. NexPoint knew the 2020 Annual Installment was due on December 31, 2020 because it was included in a 13-week forecast that Highland’s Corporate Accounting Group updated on a weekly basis and that was provided to (among others) Frank Waterhouse, NexPoint’s Treasurer and then Highland’s CFO. *See, e.g., Exhibit C* (a true and correct copy of a 13-week forecast prepared for the 13-week period commencing December 14, 2020) Exhibit C shows that Operating Receipts of \$2.051 million was due on December 28, 2020 in connection with “Interest Receipts on notes receivable,” an amount that included the Required Payment).⁸

13. NexPoint failed to make the 2020 Annual Installment due on December 31, 2020 as required under Section 2.1 of the NexPoint Note.

14. On January 14, 2021, after Highland sent notice of default, NexPoint paid Highland \$1,406,111.92. **Exhibit B** (entry dated 1/14/21).

B. Highland’s Loan Summaries

15. Highland’s accounting group has a regular practice of creating and maintaining “loan summaries” in the ordinary course of business (the “Loan Summaries”). The Loan

⁸ This 13-week forecast is also included as Highland’s Ex. 58 and is just an example. For years, the accounting group prepared a 13-week forecast that was updated weekly so that everyone knew what payments and receipts were anticipated.

Summaries identify amounts owed to Highland under affiliate notes and are created by updating underlying schedules for activity and reconciling with Highland's general ledger. Ex. 199 is an example of a Loan Summary. The Loan Summaries identify each Obligor by reference to the "GL" number used in the general ledger. *See* Ex. 199 (HCMS ("GL 14530"), HCMFA ("GL 14531"), NexPoint ("GL 14532"), HCRE ("GL 14533"), and Mr. Dondero ("GL 14565")).

16. The Loan Summaries were used in connection with the PwC audits and to support accounting entries and year-end balances in the ordinary course of Highland's business. For example, Ex. 199 ties exactly into Ex. 198, the "back up" to the "Due from affiliates" entry in the January 2021 MOR. Docket No. 2020.⁹

C. The Notes

17. In the ordinary course of business, Highland had (and continues to have) a regular practice of maintaining electronic copies of all promissory notes issued by any officer, employee, or corporate affiliate.

18. Attached as **Exhibit D** is a true and correct copy of a promissory note dated February 2, 2018, executed by James Dondero, as the maker, in the original principal amount of \$3,825,000 in favor of Highland that was and is maintained in Highland's books and records in the ordinary course of business and that was provided to PwC in connection with its annual audits (the "First Dondero Note").

⁹ Colloquially, the Loan Summaries are the "back up" to the "back up." To illustrate, and working backwards, the January 2021 MOR reported that \$152,538,000 was "Due from affiliates." Docket No. 2030 (balance sheet). Ex. 198 is the "back up" to the January 2021 MOR and it shows that \$152,537,622 was the "Total Due from Affiliates" (the January 2021 MOR rounded up to the nearest thousand). Ex. 199, the Loan Summary, is the "back up" to the "back up," and is reconciled with Highland's general ledger. As can be seen, the Loan Summary specifies the outstanding principal amounts due under each Note. Interest on these notes is accrued in a single account (general ledger account 14010).

19. Attached as **Exhibit E** is a true and correct copy of a promissory note dated August 1, 2018, executed by James Dondero, as the maker, in the original principal amount of \$2,500,000 in favor of Highland that was and is maintained in Highland's books and records in the ordinary course of business and that was provided to PwC in connection with its annual audits (the "Second Dondero Note").

20. Attached as **Exhibit F** is a true and correct copy of a promissory note dated August 13, 2018, executed by James Dondero, as the maker, in the original principal amount of \$2,500,000 in favor of Highland that was and is maintained in Highland's books and records in the ordinary course of business and that was provided to PwC in connection with its annual audits (the "Third Dondero Note," and together with the First Dondero Note and Second Dondero Note, the "Dondero Notes").

21. Attached as **Exhibit G** is a true and correct copy of a promissory note dated May 2, 2019, executed by HCMFA, as the maker, in the original principal amount of \$2,400,000 in favor of Highland that was and is maintained in Highland's books and records in the ordinary course of business and that was provided to PwC in connection with its annual audits (the "First HCMFA Demand Note").

22. Attached as **Exhibit H** is a true and correct copy of a promissory note dated May 3, 2019, executed by HCMFA, as the maker, in the original principal amount of \$5,000,000 in favor of Highland that was and is maintained in Highland's books and records in the ordinary course of business and that was provided to PwC in connection with its annual audits (the "Second HCMFA Demand Note," and together with the First HCMFA Note, the "HCMFA Demand Notes").

23. Attached as **Exhibit I** is a true and correct copy of a promissory note dated March 28, 2018, executed by HCMS, as the maker, in the original principal amount of \$150,000 in favor of Highland that was and is maintained in Highland's books and records in the ordinary course of business and that was provided to PwC in connection with its annual audits (the "First HCMS Demand Note").

24. Attached as **Exhibit J** is a true and correct copy of a promissory note dated June 25, 2018, executed by HCMS, as the maker, in the original principal amount of \$200,000 in favor of Highland that was and is maintained in Highland's books and records in the ordinary course of business and that was provided to PwC in connection with its annual audits (the "Second HCMS Demand Note").

25. Attached as **Exhibit K** is a true and correct copy of a promissory note dated May 29, 2019, executed by HCMS, as the maker, in the original principal amount of \$400,000 in favor of Highland that was and is maintained in Highland's books and records in the ordinary course of business (the "Third HCMS Demand Note").

26. Attached as **Exhibit L** is a true and correct copy of a promissory note dated June 26, 2019, executed by HCMS, as the maker, in the original principal amount of \$150,000 in favor of Highland that was and is maintained in Highland's books and records in the ordinary course of business (the "Fourth HCMS Demand Note," and collectively with the First HCMS Demand Note, the Second HCMS Demand Note, and Third HCMS Demand Notes, the "HCMS Demand Notes").

27. Attached as **Exhibit M** is a true and correct copy of a promissory note dated November 27, 2013, executed by HCRE, as the maker, in the original principal amount of \$100,000 in favor of Highland that was and is maintained in Highland's books and records in the

ordinary course of business and that was provided to PwC in connection with its annual audits (the “First HCRE Demand Note”).

28. Attached as **Exhibit N** is a true and correct copy of a promissory note dated October 12, 2017, executed by HCRE, as the maker, in the original principal amount of \$2,500,000 in favor of Highland that was and is maintained in Highland’s books and records in the ordinary course of business and that was provided to PwC in connection with its annual audits (the “Second HCRE Demand Note”).

29. Attached as **Exhibit O** is a true and correct copy of a promissory note dated October 15, 2018, executed by HCRE, as the maker, in the original principal amount of \$750,000 in favor of Highland that was and is maintained in Highland’s books and records in the ordinary course of business and that was provided to PwC in connection with its annual audits (the “Third HCRE Demand Note”).

30. Attached as **Exhibit P** is a true and correct copy of a promissory note dated September 25, 2019, executed by HCRE, as the maker, in the original principal amount of \$900,000 in favor of Highland that was and is maintained in Highland’s books and records in the ordinary course of business (the “Fourth HCRE Demand Note,” and collectively with the First HCRE Demand Note, the Second HCRE Demand Note, and Third HCRE Demand Notes, the “HCRE Demand Notes,” and together with the Dondero Demand Notes and the HCMS Demand Notes, the “Demand Notes”).

31. Attached as **Exhibit A** is a true and correct copy of a promissory note dated May 31, 2017, executed by NexPoint, as the maker, in the original principal amount of \$30,746,812.23 in favor of Highland that was and is maintained in Highland’s books and records in the ordinary

course of business and that was provided to PwC in connection with its annual audits (the “NexPoint Note”).

32. Attached as **Exhibit Q** is a true and correct copy of a promissory note dated May 31, 2017, executed by HCMS, as the maker, in the original principal amount of \$20,247,628.02 in favor of Highland that was and is maintained in Highland’s books and records in the ordinary course of business and that was provided to PwC in connection with its annual audits (the “HCMS Term Note”).

33. Attached as **Exhibit R** is a true and correct copy of a promissory note dated May 31, 2017, executed by HCRE, as the maker, in the original principal amount of \$6,059,831.51 in favor of Highland that was and is maintained in Highland’s books and records in the ordinary course of business and that was provided to PwC in connection with its annual audits (the “HCRE Term Note,” and together with the NexPoint Term Note and the HCMS Term Note, the “Term Notes”).

34. As of (a) December 11, 2020, the unpaid principal and accrued interest due under the First Dondero Note was \$3,708,273.71, and (b) as of December 17, 2021, the unpaid principal and accrued interest due under the First Dondero Note was \$3,808,783.89.

35. As of (a) December 11, 2020, the unpaid principal and accrued interest due under the Second Dondero Note was \$2,647,880.12, and (b) as of December 17, 2021, the unpaid principal and accrued interest due under the Second Dondero Note was \$2,727,300.55.

36. As of (a) December 11, 2020, the unpaid principal and accrued interest due under the Third Dondero Note was \$2,647,859.55, and as of (b) December 17, 2021, the unpaid principal and accrued interest due under the Third Dondero Note was \$2,727,280.61.

37. Thus, (a) as of December 11, 2020, the unpaid principal and accrued interest due under the Dondero Notes was \$9,004,013.07, and (b) as of December 17, 2021, the unpaid principal and accrued interest due under the Dondero Notes was \$9,263,365.05.

38. As of (a) December 11, 2020, the unpaid principal and accrued interest due under the First HCMFA Note was \$2,493,401.61, and (b) as of December 17, 2021, the unpaid principal and accrued interest due under the First Dondero Note was \$2,553,982.49.

39. As of (a) December 11, 2020, the unpaid principal and accrued interest due under the Second HCMFA Note was \$5,194,251.45, and (b) as of December 17, 2021, the unpaid principal and accrued interest due under the Second HCMFA Note was \$5,320,453.60.

40. Thus, as of (a) December 11, 2020, the unpaid principal and accrued interest due under the HCMFA Notes was \$7,687,653.06, and as of (b) December 17, 2020, the unpaid principal and accrued interest due under the HCMFA Notes was \$7,874,436.09.

41. As of (a) December 11, 2020, the unpaid principal and accrued interest due under the First HCMS Demand Note was \$162,033.91, and as of (b) December 17, 2021, the unpaid principal and accrued interest due under the First HCMS Demand Note was \$166,777.82.

42. As of (a) December 11, 2020, the unpaid principal and accrued interest due under the Second HCMS Demand Note was \$215,402.81, and as of (b) December 17, 2021, the unpaid principal and accrued interest due under the Second HCMS Demand Note was \$222,082.34.

43. As of (a) December 11, 2020, the unpaid principal and accrued interest due under the Third HCMS Demand Note was \$414,842.81, and as of (b) December 17, 2021, the unpaid principal and accrued interest due under the Third HCMS Demand Note was \$424,922.32.

44. As of (a) December 11, 2020, the unpaid principal and accrued interest due under the Fourth HCMS Demand Note was \$155,239.90, and as of (b) December 17, 2021, the unpaid principal and accrued interest due under the Fourth HCMS Demand Note was \$158,980.33.

45. Thus, as of (a) December 11, 2020, the unpaid principal and accrued interest due under the HCMS Demand Notes was \$947,519.43, and as of (b) December 17, 2021, the unpaid principal and accrued interest due under the HCMS Demand Notes was \$972,762.81.

46. As of (a) December 11, 2020, the unpaid principal and accrued interest due under the First HCRE Demand Note was \$171,978.10, and as of (b) December 17, 2021, the unpaid principal and accrued interest due under the First HCRE Demand Note was \$185,979.85.

47. As of (a) December 11, 2020, the unpaid principal and accrued interest due under the Second HCRE Demand Note was \$3,191,342.72, and as of (b) December 17, 2021, the unpaid principal and accrued interest due under the Second HCRE Demand Note was \$3,380,385.47.

48. As of (a) December 11, 2020, the unpaid principal and accrued interest due under the Third HCRE Demand Note was \$885,908.76, and as of (b) December 17, 2021, the unpaid principal and accrued interest due under the Third HCRE Demand Note was \$938,970.62.

49. As of (a) December 11, 2020, the unpaid principal and accrued interest due under the Fourth HCRE Demand Note was \$762,941.38, and as of (b) December 17, 2021, the unpaid principal and accrued interest due under the Fourth HCRE Demand Note was \$825,042.29.

50. Thus, as of (a) December 11, 2020, the unpaid principal and accrued interest due under the HCRE Demand Notes was \$5,012,170.96, and as of (b) December 17, 2021, the unpaid principal and accrued interest due under the HCRE Demand Notes was \$5,330,378.23.

51. As of (a) January 8, 2021, the unpaid principal and accrued interest due under the NexPoint Term Note was \$24,471,804.98, and as of (b) December 17, 2021, the unpaid principal and accrued interest due under the NexPoint Term Note was \$24,383,877.27.¹⁰

52. As of (a) January 8, 2021, the unpaid principal and accrued interest due under the HCMS Term Note was \$6,758,507.81, and as of (b) December 17, 2021, the unpaid principal and accrued interest due under the HCMS Term Note was \$6,748,456.31¹¹.

53. As of (a) January 8, 2021, the unpaid principal and accrued interest due under the HCRE Term Note was \$6,145,466.84, and as of (b) December 17, 2021, the unpaid principal and accrued interest due under the HCRE Term Note was \$5,899,962.22.¹²

I declare under penalty of perjury that the forgoing is true and correct.

Dated: December 17, 2021

/s/ David Klos
David Klos

¹⁰ Total unpaid principal and interest due actually decreased from January 8, 2021 to December 17, 2021 because a payment of \$1,406,111.92 made January 14, 2021, which reduced the total principal and interest then-outstanding.

¹¹ Total unpaid outstanding principal and interest due actually decreased from January 8, 2021 to December 17, 2021 because a payment of \$181,226.83 made January 21, 2021, which reduced the total principal and interest then-outstanding.

¹² Total unpaid principal and interest due actually decreased from January 8, 2021 to December 17, 2021 because a payment of \$665,811.09 made January 21, 2021, which reduced the total principal and interest then-outstanding.

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EXHIBIT A

PROMISSORY NOTE

\$30,746,812.33

May 31, 2017

THIS PROMISSORY NOTE (this “**Note**”) is in substitution for and supersedes in their entirety each of those certain promissory notes described in Exhibit A hereto, from NexPoint Advisors, L.P., as Maker, and Highland Capital Management, L.P. as Payee (collectively, the “**Prior Notes**”), together with the aggregate outstanding principal and accrued and unpaid interest represented thereby.

FOR VALUE RECEIVED, NEXPOINT ADVISORS, L.P. (“**Maker**”) promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, L.P. (“**Payee**”), in legal and lawful tender of the United States of America, the principal sum of THIRTY MILLION, SEVEN HUNDRED FORTY SIX THOUSAND, EIGHT HUNDRED TWELVE AND 33/100 DOLLARS (\$30,746,812.33), together with interest, on the terms set forth below. All sums hereunder are payable to Payee at 300 Crescent Court, Suite 700, Dallas, Texas 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at the rate of six percent (6.00%) per annum from the date hereof until Maturity Date (hereinafter defined), compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable annually.

2. Payment of Principal and Interest. Principal and interest under this Note shall be payable as follows:

2.1 Annual Payment Dates. During the term of this Note, Borrower shall pay the outstanding principal amount of the Note (and all unpaid accrued interest through the date of each such payment) in thirty (30) equal annual payments (the “**Annual Installment**”) until the Note is paid in full. Borrower shall pay the Annual Installment on the 31st day of December of each calendar year during the term of this Note, commencing on the first such date to occur after the date of execution of this Note.

2.2 Final Payment Date. The final payment in the aggregate amount of the then outstanding and unpaid Note, together with all accrued and unpaid interest thereon, shall become immediately due and payable in full on December 31, 2047 (the “**Maturity Date**”).

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same

shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

9. Prior Notes. The original of each of the Prior Notes superseded hereby shall be marked "VOID" by Payee.

MAKER:

NEXPOINT ADVISORS, L.P.

By: NexPoint Advisors GP, LLC, its general partner

By: 
Name: _____
Title: _____

EXHIBIT A

PRIOR NOTES

Loan Date	Initial Note Amount	Interest Rate	Principal and Interest Outstanding as of May 31, 2017
8/21/14	\$4,000,000	6.00%	\$4,616,739.73
10/1/14	\$6,000,000	6.00%	\$6,959,671.23
11/14/14	\$2,500,000	6.00%	\$2,881,780.82
1/29/15	\$3,100,000	6.00%	\$3,534,679.45
7/22/15	\$12,075,000	6.00%	\$12,753,941.10
	\$27,675,000		\$30,746,812.33

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EXHIBIT B

NPA \$30.7M

Closing Date 5/31/2017
Total Commitment \$ 30,746,812
Rate 6.000%
Maturity: 12/31/2047

Date	Interest Accrual	Interest Paid	Accrued Interest	Beg Prin Bal	Principal Paid	Ending Prin Bal	Total Paid
5/31/2017						\$ 30,746,812	
6/30/2017	151,628.12		151,628.12	30,746,812.33		30,746,812.33	
7/31/2017	156,682.39		308,310.50	30,746,812.33		30,746,812.33	
8/31/2017	156,682.39		464,992.89	30,746,812.33		30,746,812.33	
9/30/2017	151,628.12		616,621.00	30,746,812.33		30,746,812.33	
10/20/2017	101,085.41	(717,706.41)	-	30,746,812.33	(82,293.59)	30,664,518.74	(800,000.00)
10/31/2017	55,448.17		55,448.17	30,664,518.74		30,664,518.74	
11/30/2017	151,222.28		206,670.46	30,664,518.74		30,664,518.74	
12/5/2017	25,203.71	(358,904.83)	(127,030.67)	30,664,518.74	(942,600.16)	29,721,918.58	(1,301,504.99)
12/31/2017	127,030.67		(0.00)	29,721,918.58		29,721,918.58	
1/31/2018	151,459.64		151,459.64	29,721,918.58		29,721,918.58	
2/28/2018	136,802.26		288,261.90	29,721,918.58		29,721,918.58	
3/31/2018	151,459.64		439,721.54	29,721,918.58		29,721,918.58	
4/10/2018	48,857.95	(439,721.54)	48,857.95	29,721,918.58		29,721,918.58	(439,721.54)
4/30/2018	97,715.90		146,573.85	29,721,918.58		29,721,918.58	
5/1/2018	4,885.79	(146,573.85)	4,885.79	29,721,918.58		29,721,918.58	(146,573.85)
5/9/2018	39,086.36	(879,927.65)	(835,955.50)	29,721,918.58		29,721,918.58	(879,927.65)
5/31/2018	107,487.49		(728,468.01)	29,721,918.58		29,721,918.58	
6/30/2018	146,573.85		(581,894.17)	29,721,918.58		29,721,918.58	
7/31/2018	151,459.64		(430,434.53)	29,721,918.58		29,721,918.58	
8/31/2018	151,459.64		(278,974.89)	29,721,918.58		29,721,918.58	
9/5/2018	24,428.97		(254,545.91)	29,721,918.58	(280,765.40)	29,441,153.18	(280,765.40)
9/21/2018	77,434.27		(177,111.65)	29,441,153.18	(1,023,750.00)	28,417,403.18	(1,023,750.00)
9/30/2018	42,042.19		(135,069.46)	28,417,403.18		28,417,403.18	
10/31/2018	144,811.97		9,742.51	28,417,403.18		28,417,403.18	
11/30/2018	140,140.62		149,883.13	28,417,403.18		28,417,403.18	
12/18/2018	84,084.37	(294,695.10)	(60,727.60)	28,417,403.18		28,417,403.18	(294,695.10)
12/31/2018	60,727.60		(0.00)	28,417,403.18		28,417,403.18	

1/31/2019	144,811.97		144,811.97	28,417,403.18		28,417,403.18	
2/28/2019	130,797.91		275,609.88	28,417,403.18		28,417,403.18	
3/29/2019	135,469.26	(411,079.15)	(0.00)	28,417,403.18	(338,920.85)	28,078,482.33	(750,000.00)
3/31/2019	9,231.28		9,231.28	28,078,482.33		28,078,482.33	
4/16/2019	73,850.25	(83,081.53)	0.00	28,078,482.33	(1,216,918.47)	26,861,563.86	(1,300,000.00)
4/30/2019	61,818.39		61,818.40	26,861,563.86		26,861,563.86	
5/31/2019	136,883.59	(198,701.98)	0.00	26,861,563.86	198,701.98	27,060,265.84	-
6/4/2019	17,793.05	(17,793.05)	0.00	27,060,265.84	(282,206.95)	26,778,058.89	(300,000.00)
6/19/2019	66,028.09	(66,028.10)	(0.00)	26,778,058.89	(2,033,971.90)	24,744,086.99	(2,100,000.00)
6/30/2019	44,742.73		44,742.73	24,744,086.99		24,744,086.99	
7/9/2019	36,607.69	(81,350.42)	(0.00)	24,744,086.99	(548,649.58)	24,195,437.41	(630,000.00)
7/31/2019	87,501.31		87,501.31	24,195,437.41		24,195,437.41	
8/13/2019	51,705.32	(139,206.62)	0.00	24,195,437.41	(1,160,793.38)	23,034,644.03	(1,300,000.00)
8/31/2019	68,157.30		68,157.31	23,034,644.03		23,034,644.03	
9/30/2019	113,595.50		181,752.81	23,034,644.03		23,034,644.03	
10/15/2019	56,797.75		238,550.56	23,034,644.03		23,034,644.03	
10/31/2019	60,584.27		299,134.83	23,034,644.03		23,034,644.03	
11/30/2019	113,595.50		412,730.34	23,034,644.03		23,034,644.03	
12/30/2019	113,595.50	-530,112.36	(3,786.52)	23,034,644.03		23,034,644.03	(530,112.36)
12/31/2019	3,786.52		0.00	23,034,644.03		23,034,644.03	
1/31/2020	117,382.02		117,382.02	23,034,644.03		23,034,644.03	
2/29/2020	109,808.99		227,191.01	23,034,644.03		23,034,644.03	
3/31/2020	117,382.02		344,573.03	23,034,644.03		23,034,644.03	
4/30/2020	113,595.50		458,168.54	23,034,644.03		23,034,644.03	
5/31/2020	117,382.02	(575,550.56)	(0.00)	23,034,644.03	575,550.56	23,610,194.59	
6/30/2020	116,433.84		116,433.83	23,610,194.59		23,610,194.59	
7/31/2020	120,314.96		236,748.80	23,610,194.59		23,610,194.59	
8/31/2020	120,314.96		357,063.76	23,610,194.59		23,610,194.59	
9/30/2020	116,433.84		473,497.60	23,610,194.59		23,610,194.59	
10/31/2020	120,314.96		593,812.56	23,610,194.59		23,610,194.59	
11/30/2020	116,433.84		710,246.40	23,610,194.59		23,610,194.59	
12/31/2020	120,314.96		830,561.36	23,610,194.59		23,610,194.59	
1/14/2021	54,335.79	(830,561.36)	54,335.79	23,610,194.59	(575,550.56)	23,034,644.03	(1,406,111.92)
1/31/2021	64,370.79		118,706.58	23,034,644.03		23,034,644.03	
2/28/2021	106,022.47		224,729.05	23,034,644.03		23,034,644.03	
3/31/2021	117,382.02		342,111.07	23,034,644.03		23,034,644.03	
4/30/2021	113,595.50		455,706.58	23,034,644.03		23,034,644.03	
5/31/2021	117,382.02		573,088.60	23,034,644.03		23,034,644.03	

6/30/2021	113,595.50	686,684.10	23,034,644.03	23,034,644.03
7/31/2021	117,382.02	804,066.13	23,034,644.03	23,034,644.03
8/31/2021	117,382.02	921,448.15	23,034,644.03	23,034,644.03
9/30/2021	113,595.50	1,035,043.65	23,034,644.03	23,034,644.03
10/31/2021	117,382.02	1,152,425.67	23,034,644.03	23,034,644.03
11/30/2021	113,595.50	1,266,021.18	23,034,644.03	23,034,644.03
12/31/2021	117,382.02	1,383,403.20	23,034,644.03	23,034,644.03
1/31/2022	117,382.02	1,500,785.22	23,034,644.03	23,034,644.03
2/28/2022	106,022.47	1,606,807.69	23,034,644.03	23,034,644.03
3/31/2022	117,382.02	1,724,189.72	23,034,644.03	23,034,644.03
4/30/2022	113,595.50	1,837,785.22	23,034,644.03	23,034,644.03
5/31/2022	117,382.02	1,955,167.24	23,034,644.03	23,034,644.03
6/30/2022	113,595.50	2,068,762.75	23,034,644.03	23,034,644.03
7/31/2022	117,382.02	2,186,144.77	23,034,644.03	23,034,644.03
8/31/2022	117,382.02	2,303,526.79	23,034,644.03	23,034,644.03
9/30/2022	113,595.50	2,417,122.29	23,034,644.03	23,034,644.03
10/31/2022	117,382.02	2,534,504.32	23,034,644.03	23,034,644.03
11/30/2022	113,595.50	2,648,099.82	23,034,644.03	23,034,644.03
12/31/2022	117,382.02	2,765,481.84	23,034,644.03	23,034,644.03
1/31/2023	117,382.02	2,882,863.86	23,034,644.03	23,034,644.03
2/28/2023	106,022.47	2,988,886.34	23,034,644.03	23,034,644.03
3/31/2023	117,382.02	3,106,268.36	23,034,644.03	23,034,644.03
4/30/2023	113,595.50	3,219,863.86	23,034,644.03	23,034,644.03
5/31/2023	117,382.02	3,337,245.88	23,034,644.03	23,034,644.03
6/30/2023	113,595.50	3,450,841.39	23,034,644.03	23,034,644.03
7/31/2023	117,382.02	3,568,223.41	23,034,644.03	23,034,644.03
8/31/2023	117,382.02	3,685,605.43	23,034,644.03	23,034,644.03
9/30/2023	113,595.50	3,799,200.94	23,034,644.03	23,034,644.03
10/31/2023	117,382.02	3,916,582.96	23,034,644.03	23,034,644.03
11/30/2023	113,595.50	4,030,178.46	23,034,644.03	23,034,644.03
12/31/2023	117,382.02	4,147,560.48	23,034,644.03	23,034,644.03
1/31/2024	117,382.02	4,264,942.51	23,034,644.03	23,034,644.03
2/29/2024	109,808.99	4,374,751.49	23,034,644.03	23,034,644.03
3/31/2024	117,382.02	4,492,133.52	23,034,644.03	23,034,644.03
4/30/2024	113,595.50	4,605,729.02	23,034,644.03	23,034,644.03
5/31/2024	117,382.02	4,723,111.04	23,034,644.03	23,034,644.03
6/30/2024	113,595.50	4,836,706.55	23,034,644.03	23,034,644.03
7/31/2024	117,382.02	4,954,088.57	23,034,644.03	23,034,644.03

8/31/2024	117,382.02	5,071,470.59	23,034,644.03	23,034,644.03
9/30/2024	113,595.50	5,185,066.10	23,034,644.03	23,034,644.03
10/31/2024	117,382.02	5,302,448.12	23,034,644.03	23,034,644.03
11/30/2024	113,595.50	5,416,043.62	23,034,644.03	23,034,644.03
12/31/2024	117,382.02	5,533,425.64	23,034,644.03	23,034,644.03
1/31/2025	117,382.02	5,650,807.67	23,034,644.03	23,034,644.03
2/28/2025	106,022.47	5,756,830.14	23,034,644.03	23,034,644.03
3/31/2025	117,382.02	5,874,212.16	23,034,644.03	23,034,644.03
4/30/2025	113,595.50	5,987,807.66	23,034,644.03	23,034,644.03
5/31/2025	117,382.02	6,105,189.68	23,034,644.03	23,034,644.03
6/30/2025	113,595.50	6,218,785.19	23,034,644.03	23,034,644.03
7/31/2025	117,382.02	6,336,167.21	23,034,644.03	23,034,644.03
8/31/2025	117,382.02	6,453,549.23	23,034,644.03	23,034,644.03
9/30/2025	113,595.50	6,567,144.74	23,034,644.03	23,034,644.03
10/31/2025	117,382.02	6,684,526.76	23,034,644.03	23,034,644.03
11/30/2025	113,595.50	6,798,122.26	23,034,644.03	23,034,644.03
12/31/2025	117,382.02	6,915,504.29	23,034,644.03	23,034,644.03
1/31/2026	117,382.02	7,032,886.31	23,034,644.03	23,034,644.03
2/28/2026	106,022.47	7,138,908.78	23,034,644.03	23,034,644.03
3/31/2026	117,382.02	7,256,290.80	23,034,644.03	23,034,644.03
4/30/2026	113,595.50	7,369,886.31	23,034,644.03	23,034,644.03
5/31/2026	117,382.02	7,487,268.33	23,034,644.03	23,034,644.03
6/30/2026	113,595.50	7,600,863.83	23,034,644.03	23,034,644.03
7/31/2026	117,382.02	7,718,245.85	23,034,644.03	23,034,644.03
8/31/2026	117,382.02	7,835,627.87	23,034,644.03	23,034,644.03
9/30/2026	113,595.50	7,949,223.38	23,034,644.03	23,034,644.03
10/31/2026	117,382.02	8,066,605.40	23,034,644.03	23,034,644.03
11/30/2026	113,595.50	8,180,200.91	23,034,644.03	23,034,644.03
12/31/2026	117,382.02	8,297,582.93	23,034,644.03	23,034,644.03
1/31/2027	117,382.02	8,414,964.95	23,034,644.03	23,034,644.03
2/28/2027	106,022.47	8,520,987.42	23,034,644.03	23,034,644.03
3/31/2027	117,382.02	8,638,369.44	23,034,644.03	23,034,644.03
4/30/2027	113,595.50	8,751,964.95	23,034,644.03	23,034,644.03
5/31/2027	117,382.02	8,869,346.97	23,034,644.03	23,034,644.03
6/30/2027	113,595.50	8,982,942.47	23,034,644.03	23,034,644.03
7/31/2027	117,382.02	9,100,324.50	23,034,644.03	23,034,644.03
8/31/2027	117,382.02	9,217,706.52	23,034,644.03	23,034,644.03
9/30/2027	113,595.50	9,331,302.02	23,034,644.03	23,034,644.03

10/31/2027	117,382.02	9,448,684.04	23,034,644.03	23,034,644.03
11/30/2027	113,595.50	9,562,279.55	23,034,644.03	23,034,644.03
12/31/2027	117,382.02	9,679,661.57	23,034,644.03	23,034,644.03
1/31/2028	117,382.02	9,797,043.59	23,034,644.03	23,034,644.03
2/29/2028	109,808.99	9,906,852.58	23,034,644.03	23,034,644.03
3/31/2028	117,382.02	10,024,234.60	23,034,644.03	23,034,644.03
4/30/2028	113,595.50	10,137,830.11	23,034,644.03	23,034,644.03
5/31/2028	117,382.02	10,255,212.13	23,034,644.03	23,034,644.03
6/30/2028	113,595.50	10,368,807.63	23,034,644.03	23,034,644.03
7/31/2028	117,382.02	10,486,189.65	23,034,644.03	23,034,644.03
8/31/2028	117,382.02	10,603,571.68	23,034,644.03	23,034,644.03
9/30/2028	113,595.50	10,717,167.18	23,034,644.03	23,034,644.03
10/31/2028	117,382.02	10,834,549.20	23,034,644.03	23,034,644.03
11/30/2028	113,595.50	10,948,144.71	23,034,644.03	23,034,644.03
12/31/2028	117,382.02	11,065,526.73	23,034,644.03	23,034,644.03
1/31/2029	117,382.02	11,182,908.75	23,034,644.03	23,034,644.03
2/28/2029	106,022.47	11,288,931.22	23,034,644.03	23,034,644.03
3/31/2029	117,382.02	11,406,313.24	23,034,644.03	23,034,644.03
4/30/2029	113,595.50	11,519,908.75	23,034,644.03	23,034,644.03
5/31/2029	117,382.02	11,637,290.77	23,034,644.03	23,034,644.03
6/30/2029	113,595.50	11,750,886.27	23,034,644.03	23,034,644.03
7/31/2029	117,382.02	11,868,268.30	23,034,644.03	23,034,644.03
8/31/2029	117,382.02	11,985,650.32	23,034,644.03	23,034,644.03
9/30/2029	113,595.50	12,099,245.82	23,034,644.03	23,034,644.03
10/31/2029	117,382.02	12,216,627.84	23,034,644.03	23,034,644.03
11/30/2029	113,595.50	12,330,223.35	23,034,644.03	23,034,644.03
12/31/2029	117,382.02	12,447,605.37	23,034,644.03	23,034,644.03
1/31/2030	117,382.02	12,564,987.39	23,034,644.03	23,034,644.03
2/28/2030	106,022.47	12,671,009.86	23,034,644.03	23,034,644.03
3/31/2030	117,382.02	12,788,391.89	23,034,644.03	23,034,644.03
4/30/2030	113,595.50	12,901,987.39	23,034,644.03	23,034,644.03
5/31/2030	117,382.02	13,019,369.41	23,034,644.03	23,034,644.03
6/30/2030	113,595.50	13,132,964.92	23,034,644.03	23,034,644.03
7/31/2030	117,382.02	13,250,346.94	23,034,644.03	23,034,644.03
8/31/2030	117,382.02	13,367,728.96	23,034,644.03	23,034,644.03
9/30/2030	113,595.50	13,481,324.46	23,034,644.03	23,034,644.03
10/31/2030	117,382.02	13,598,706.49	23,034,644.03	23,034,644.03
11/30/2030	113,595.50	13,712,301.99	23,034,644.03	23,034,644.03

12/31/2030	117,382.02	13,829,684.01	23,034,644.03	23,034,644.03
1/31/2031	117,382.02	13,947,066.03	23,034,644.03	23,034,644.03
2/28/2031	106,022.47	14,053,088.51	23,034,644.03	23,034,644.03
3/31/2031	117,382.02	14,170,470.53	23,034,644.03	23,034,644.03
4/30/2031	113,595.50	14,284,066.03	23,034,644.03	23,034,644.03
5/31/2031	117,382.02	14,401,448.05	23,034,644.03	23,034,644.03
6/30/2031	113,595.50	14,515,043.56	23,034,644.03	23,034,644.03
7/31/2031	117,382.02	14,632,425.58	23,034,644.03	23,034,644.03
8/31/2031	117,382.02	14,749,807.60	23,034,644.03	23,034,644.03
9/30/2031	113,595.50	14,863,403.11	23,034,644.03	23,034,644.03
10/31/2031	117,382.02	14,980,785.13	23,034,644.03	23,034,644.03
11/30/2031	113,595.50	15,094,380.63	23,034,644.03	23,034,644.03
12/31/2031	117,382.02	15,211,762.65	23,034,644.03	23,034,644.03
1/31/2032	117,382.02	15,329,144.68	23,034,644.03	23,034,644.03
2/29/2032	109,808.99	15,438,953.66	23,034,644.03	23,034,644.03
3/31/2032	117,382.02	15,556,335.69	23,034,644.03	23,034,644.03
4/30/2032	113,595.50	15,669,931.19	23,034,644.03	23,034,644.03
5/31/2032	117,382.02	15,787,313.21	23,034,644.03	23,034,644.03
6/30/2032	113,595.50	15,900,908.72	23,034,644.03	23,034,644.03
7/31/2032	117,382.02	16,018,290.74	23,034,644.03	23,034,644.03
8/31/2032	117,382.02	16,135,672.76	23,034,644.03	23,034,644.03
9/30/2032	113,595.50	16,249,268.27	23,034,644.03	23,034,644.03
10/31/2032	117,382.02	16,366,650.29	23,034,644.03	23,034,644.03
11/30/2032	113,595.50	16,480,245.79	23,034,644.03	23,034,644.03
12/31/2032	117,382.02	16,597,627.81	23,034,644.03	23,034,644.03
1/31/2033	117,382.02	16,715,009.84	23,034,644.03	23,034,644.03
2/28/2033	106,022.47	16,821,032.31	23,034,644.03	23,034,644.03
3/31/2033	117,382.02	16,938,414.33	23,034,644.03	23,034,644.03
4/30/2033	113,595.50	17,052,009.83	23,034,644.03	23,034,644.03
5/31/2033	117,382.02	17,169,391.85	23,034,644.03	23,034,644.03
6/30/2033	113,595.50	17,282,987.36	23,034,644.03	23,034,644.03
7/31/2033	117,382.02	17,400,369.38	23,034,644.03	23,034,644.03
8/31/2033	117,382.02	17,517,751.40	23,034,644.03	23,034,644.03
9/30/2033	113,595.50	17,631,346.91	23,034,644.03	23,034,644.03
10/31/2033	117,382.02	17,748,728.93	23,034,644.03	23,034,644.03
11/30/2033	113,595.50	17,862,324.43	23,034,644.03	23,034,644.03
12/31/2033	117,382.02	17,979,706.46	23,034,644.03	23,034,644.03
1/31/2034	117,382.02	18,097,088.48	23,034,644.03	23,034,644.03

2/28/2034	106,022.47	18,203,110.95	23,034,644.03	23,034,644.03
3/31/2034	117,382.02	18,320,492.97	23,034,644.03	23,034,644.03
4/30/2034	113,595.50	18,434,088.47	23,034,644.03	23,034,644.03
5/31/2034	117,382.02	18,551,470.50	23,034,644.03	23,034,644.03
6/30/2034	113,595.50	18,665,066.00	23,034,644.03	23,034,644.03
7/31/2034	117,382.02	18,782,448.02	23,034,644.03	23,034,644.03
8/31/2034	117,382.02	18,899,830.04	23,034,644.03	23,034,644.03
9/30/2034	113,595.50	19,013,425.55	23,034,644.03	23,034,644.03
10/31/2034	117,382.02	19,130,807.57	23,034,644.03	23,034,644.03
11/30/2034	113,595.50	19,244,403.08	23,034,644.03	23,034,644.03
12/31/2034	117,382.02	19,361,785.10	23,034,644.03	23,034,644.03
1/31/2035	117,382.02	19,479,167.12	23,034,644.03	23,034,644.03
2/28/2035	106,022.47	19,585,189.59	23,034,644.03	23,034,644.03
3/31/2035	117,382.02	19,702,571.61	23,034,644.03	23,034,644.03
4/30/2035	113,595.50	19,816,167.12	23,034,644.03	23,034,644.03
5/31/2035	117,382.02	19,933,549.14	23,034,644.03	23,034,644.03
6/30/2035	113,595.50	20,047,144.64	23,034,644.03	23,034,644.03
7/31/2035	117,382.02	20,164,526.67	23,034,644.03	23,034,644.03
8/31/2035	117,382.02	20,281,908.69	23,034,644.03	23,034,644.03
9/30/2035	113,595.50	20,395,504.19	23,034,644.03	23,034,644.03
10/31/2035	117,382.02	20,512,886.21	23,034,644.03	23,034,644.03
11/30/2035	113,595.50	20,626,481.72	23,034,644.03	23,034,644.03
12/31/2035	117,382.02	20,743,863.74	23,034,644.03	23,034,644.03
1/31/2036	117,382.02	20,861,245.76	23,034,644.03	23,034,644.03
2/29/2036	109,808.99	20,971,054.75	23,034,644.03	23,034,644.03
3/31/2036	117,382.02	21,088,436.77	23,034,644.03	23,034,644.03
4/30/2036	113,595.50	21,202,032.28	23,034,644.03	23,034,644.03
5/31/2036	117,382.02	21,319,414.30	23,034,644.03	23,034,644.03
6/30/2036	113,595.50	21,433,009.80	23,034,644.03	23,034,644.03
7/31/2036	117,382.02	21,550,391.82	23,034,644.03	23,034,644.03
8/31/2036	117,382.02	21,667,773.85	23,034,644.03	23,034,644.03
9/30/2036	113,595.50	21,781,369.35	23,034,644.03	23,034,644.03
10/31/2036	117,382.02	21,898,751.37	23,034,644.03	23,034,644.03
11/30/2036	113,595.50	22,012,346.88	23,034,644.03	23,034,644.03
12/31/2036	117,382.02	22,129,728.90	23,034,644.03	23,034,644.03
1/31/2037	117,382.02	22,247,110.92	23,034,644.03	23,034,644.03
2/28/2037	106,022.47	22,353,133.39	23,034,644.03	23,034,644.03
3/31/2037	117,382.02	22,470,515.41	23,034,644.03	23,034,644.03

4/30/2037	113,595.50	22,584,110.92	23,034,644.03	23,034,644.03
5/31/2037	117,382.02	22,701,492.94	23,034,644.03	23,034,644.03
6/30/2037	113,595.50	22,815,088.44	23,034,644.03	23,034,644.03
7/31/2037	117,382.02	22,932,470.47	23,034,644.03	23,034,644.03
8/31/2037	117,382.02	23,049,852.49	23,034,644.03	23,034,644.03
9/30/2037	113,595.50	23,163,447.99	23,034,644.03	23,034,644.03
10/31/2037	117,382.02	23,280,830.01	23,034,644.03	23,034,644.03
11/30/2037	113,595.50	23,394,425.52	23,034,644.03	23,034,644.03
12/31/2037	117,382.02	23,511,807.54	23,034,644.03	23,034,644.03
1/31/2038	117,382.02	23,629,189.56	23,034,644.03	23,034,644.03
2/28/2038	106,022.47	23,735,212.03	23,034,644.03	23,034,644.03
3/31/2038	117,382.02	23,852,594.06	23,034,644.03	23,034,644.03
4/30/2038	113,595.50	23,966,189.56	23,034,644.03	23,034,644.03
5/31/2038	117,382.02	24,083,571.58	23,034,644.03	23,034,644.03
6/30/2038	113,595.50	24,197,167.09	23,034,644.03	23,034,644.03
7/31/2038	117,382.02	24,314,549.11	23,034,644.03	23,034,644.03
8/31/2038	117,382.02	24,431,931.13	23,034,644.03	23,034,644.03
9/30/2038	113,595.50	24,545,526.63	23,034,644.03	23,034,644.03
10/31/2038	117,382.02	24,662,908.66	23,034,644.03	23,034,644.03
11/30/2038	113,595.50	24,776,504.16	23,034,644.03	23,034,644.03
12/31/2038	117,382.02	24,893,886.18	23,034,644.03	23,034,644.03
1/31/2039	117,382.02	25,011,268.20	23,034,644.03	23,034,644.03
2/28/2039	106,022.47	25,117,290.68	23,034,644.03	23,034,644.03
3/31/2039	117,382.02	25,234,672.70	23,034,644.03	23,034,644.03
4/30/2039	113,595.50	25,348,268.20	23,034,644.03	23,034,644.03
5/31/2039	117,382.02	25,465,650.22	23,034,644.03	23,034,644.03
6/30/2039	113,595.50	25,579,245.73	23,034,644.03	23,034,644.03
7/31/2039	117,382.02	25,696,627.75	23,034,644.03	23,034,644.03
8/31/2039	117,382.02	25,814,009.77	23,034,644.03	23,034,644.03
9/30/2039	113,595.50	25,927,605.28	23,034,644.03	23,034,644.03
10/31/2039	117,382.02	26,044,987.30	23,034,644.03	23,034,644.03
11/30/2039	113,595.50	26,158,582.80	23,034,644.03	23,034,644.03
12/31/2039	117,382.02	26,275,964.82	23,034,644.03	23,034,644.03
1/31/2040	117,382.02	26,393,346.85	23,034,644.03	23,034,644.03
2/29/2040	109,808.99	26,503,155.83	23,034,644.03	23,034,644.03
3/31/2040	117,382.02	26,620,537.86	23,034,644.03	23,034,644.03
4/30/2040	113,595.50	26,734,133.36	23,034,644.03	23,034,644.03
5/31/2040	117,382.02	26,851,515.38	23,034,644.03	23,034,644.03

6/30/2040	113,595.50	26,965,110.89	23,034,644.03	23,034,644.03
7/31/2040	117,382.02	27,082,492.91	23,034,644.03	23,034,644.03
8/31/2040	117,382.02	27,199,874.93	23,034,644.03	23,034,644.03
9/30/2040	113,595.50	27,313,470.44	23,034,644.03	23,034,644.03
10/31/2040	117,382.02	27,430,852.46	23,034,644.03	23,034,644.03
11/30/2040	113,595.50	27,544,447.96	23,034,644.03	23,034,644.03
12/31/2040	117,382.02	27,661,829.98	23,034,644.03	23,034,644.03
1/31/2041	117,382.02	27,779,212.01	23,034,644.03	23,034,644.03
2/28/2041	106,022.47	27,885,234.48	23,034,644.03	23,034,644.03
3/31/2041	117,382.02	28,002,616.50	23,034,644.03	23,034,644.03
4/30/2041	113,595.50	28,116,212.00	23,034,644.03	23,034,644.03
5/31/2041	117,382.02	28,233,594.02	23,034,644.03	23,034,644.03
6/30/2041	113,595.50	28,347,189.53	23,034,644.03	23,034,644.03
7/31/2041	117,382.02	28,464,571.55	23,034,644.03	23,034,644.03
8/31/2041	117,382.02	28,581,953.57	23,034,644.03	23,034,644.03
9/30/2041	113,595.50	28,695,549.08	23,034,644.03	23,034,644.03
10/31/2041	117,382.02	28,812,931.10	23,034,644.03	23,034,644.03
11/30/2041	113,595.50	28,926,526.60	23,034,644.03	23,034,644.03
12/31/2041	117,382.02	29,043,908.63	23,034,644.03	23,034,644.03
1/31/2042	117,382.02	29,161,290.65	23,034,644.03	23,034,644.03
2/28/2042	106,022.47	29,267,313.12	23,034,644.03	23,034,644.03
3/31/2042	117,382.02	29,384,695.14	23,034,644.03	23,034,644.03
4/30/2042	113,595.50	29,498,290.64	23,034,644.03	23,034,644.03
5/31/2042	117,382.02	29,615,672.67	23,034,644.03	23,034,644.03
6/30/2042	113,595.50	29,729,268.17	23,034,644.03	23,034,644.03
7/31/2042	117,382.02	29,846,650.19	23,034,644.03	23,034,644.03
8/31/2042	117,382.02	29,964,032.21	23,034,644.03	23,034,644.03
9/30/2042	113,595.50	30,077,627.72	23,034,644.03	23,034,644.03
10/31/2042	117,382.02	30,195,009.74	23,034,644.03	23,034,644.03
11/30/2042	113,595.50	30,308,605.25	23,034,644.03	23,034,644.03
12/31/2042	117,382.02	30,425,987.27	23,034,644.03	23,034,644.03
1/31/2043	117,382.02	30,543,369.29	23,034,644.03	23,034,644.03
2/28/2043	106,022.47	30,649,391.76	23,034,644.03	23,034,644.03
3/31/2043	117,382.02	30,766,773.78	23,034,644.03	23,034,644.03
4/30/2043	113,595.50	30,880,369.29	23,034,644.03	23,034,644.03
5/31/2043	117,382.02	30,997,751.31	23,034,644.03	23,034,644.03
6/30/2043	113,595.50	31,111,346.81	23,034,644.03	23,034,644.03
7/31/2043	117,382.02	31,228,728.84	23,034,644.03	23,034,644.03

8/31/2043	117,382.02	31,346,110.86	23,034,644.03	23,034,644.03
9/30/2043	113,595.50	31,459,706.36	23,034,644.03	23,034,644.03
10/31/2043	117,382.02	31,577,088.38	23,034,644.03	23,034,644.03
11/30/2043	113,595.50	31,690,683.89	23,034,644.03	23,034,644.03
12/31/2043	117,382.02	31,808,065.91	23,034,644.03	23,034,644.03
1/31/2044	117,382.02	31,925,447.93	23,034,644.03	23,034,644.03
2/29/2044	109,808.99	32,035,256.92	23,034,644.03	23,034,644.03
3/31/2044	117,382.02	32,152,638.94	23,034,644.03	23,034,644.03
4/30/2044	113,595.50	32,266,234.45	23,034,644.03	23,034,644.03
5/31/2044	117,382.02	32,383,616.47	23,034,644.03	23,034,644.03
6/30/2044	113,595.50	32,497,211.97	23,034,644.03	23,034,644.03
7/31/2044	117,382.02	32,614,593.99	23,034,644.03	23,034,644.03
8/31/2044	117,382.02	32,731,976.02	23,034,644.03	23,034,644.03
9/30/2044	113,595.50	32,845,571.52	23,034,644.03	23,034,644.03
10/31/2044	117,382.02	32,962,953.54	23,034,644.03	23,034,644.03
11/30/2044	113,595.50	33,076,549.05	23,034,644.03	23,034,644.03
12/31/2044	117,382.02	33,193,931.07	23,034,644.03	23,034,644.03
1/31/2045	117,382.02	33,311,313.09	23,034,644.03	23,034,644.03
2/28/2045	106,022.47	33,417,335.56	23,034,644.03	23,034,644.03
3/31/2045	117,382.02	33,534,717.58	23,034,644.03	23,034,644.03
4/30/2045	113,595.50	33,648,313.09	23,034,644.03	23,034,644.03
5/31/2045	117,382.02	33,765,695.11	23,034,644.03	23,034,644.03
6/30/2045	113,595.50	33,879,290.61	23,034,644.03	23,034,644.03
7/31/2045	117,382.02	33,996,672.64	23,034,644.03	23,034,644.03
8/31/2045	117,382.02	34,114,054.66	23,034,644.03	23,034,644.03
9/30/2045	113,595.50	34,227,650.16	23,034,644.03	23,034,644.03
10/31/2045	117,382.02	34,345,032.18	23,034,644.03	23,034,644.03
11/30/2045	113,595.50	34,458,627.69	23,034,644.03	23,034,644.03
12/31/2045	117,382.02	34,576,009.71	23,034,644.03	23,034,644.03
1/31/2046	117,382.02	34,693,391.73	23,034,644.03	23,034,644.03
2/28/2046	106,022.47	34,799,414.20	23,034,644.03	23,034,644.03
3/31/2046	117,382.02	34,916,796.23	23,034,644.03	23,034,644.03
4/30/2046	113,595.50	35,030,391.73	23,034,644.03	23,034,644.03
5/31/2046	117,382.02	35,147,773.75	23,034,644.03	23,034,644.03
6/30/2046	113,595.50	35,261,369.26	23,034,644.03	23,034,644.03
7/31/2046	117,382.02	35,378,751.28	23,034,644.03	23,034,644.03
8/31/2046	117,382.02	35,496,133.30	23,034,644.03	23,034,644.03
9/30/2046	113,595.50	35,609,728.80	23,034,644.03	23,034,644.03

10/31/2046	117,382.02	35,727,110.83	23,034,644.03	23,034,644.03
11/30/2046	113,595.50	35,840,706.33	23,034,644.03	23,034,644.03
12/31/2046	117,382.02	35,958,088.35	23,034,644.03	23,034,644.03
1/31/2047	117,382.02	36,075,470.37	23,034,644.03	23,034,644.03
2/28/2047	106,022.47	36,181,492.85	23,034,644.03	23,034,644.03
3/31/2047	117,382.02	36,298,874.87	23,034,644.03	23,034,644.03
4/30/2047	113,595.50	36,412,470.37	23,034,644.03	23,034,644.03
5/31/2047	117,382.02	36,529,852.39	23,034,644.03	23,034,644.03
6/30/2047	113,595.50	36,643,447.90	23,034,644.03	23,034,644.03
7/31/2047	117,382.02	36,760,829.92	23,034,644.03	23,034,644.03
8/31/2047	117,382.02	36,878,211.94	23,034,644.03	23,034,644.03
9/30/2047	113,595.50	36,991,807.45	23,034,644.03	23,034,644.03
10/31/2047	117,382.02	37,109,189.47	23,034,644.03	23,034,644.03

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EXHIBIT C

Highland Capital Management, L.P. - Cash

Next 13 Weeks Commencing December 14, 2020

(in thousands)

CONFIDENTIAL DRAFT FOR ILLUSTRATIVE PURPOSES ONLY - NOT FINAL OR APPROVED FOR FURTHER DISTRIBUTION

	Actual	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast
Week beginning	12/7	12/14	12/21	12/28	1/4	1/11	1/18	1/25	2/1	2/8	2/15	2/22	3/1	3/8
Beginning unrestricted operating cash	\$ 12,537	\$ 11,948	\$ 10,684	\$ 11,051	\$ 11,771	\$ 11,048	\$ 11,188	\$ 11,353	\$ 10,486	\$ 11,445	\$ 10,860	\$ 10,279	\$ 8,145	\$ 8,381
Operating Receipts														
Management fees	-	-	-	-	-	-	-	-	676	-	-	-	-	-
CLOs	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Hedge funds	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Private Equity, PetroCap, Port Co's	-	-	-	-	63	-	-	-	-	-	270	-	-	-
Separate accounts	-	-	776	-	-	-	-	750	165	-	579	-	-	-
Management fees - managed funds	\$ -	\$ -	\$ 776	\$ -	\$ 63	\$ -	\$ -	\$ 750	\$ 841	\$ -	\$ 849	\$ -	\$ -	\$ -
HCMFA / NPA investment support	-	-	668	-	-	668	-	-	668	-	-	-	668	-
Shared services receipts	39	-	168	385	-	168	290	135	-	290	60	15	-	-
Intercompany and shared services revenue	39	-	836	385	-	836	290	135	668	290	60	15	668	-
Fund reimbursements	-	-	60	-	-	-	100	-	-	-	100	-	-	-
Interest receipts on notes receivable	-	-	-	2,051	-	-	-	-	-	-	-	-	-	-
Dividend receipts (unencumbered)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Other miscellaneous receipts	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total other receipts	\$ -	\$ -	\$ 60	\$ 2,051	\$ -	\$ -	\$ 100	\$ -	\$ -	\$ -	\$ 100	\$ -	\$ -	\$ -
Total operating receipts	\$ 39	\$ -	\$ 1,672	\$ 2,436	\$ 63	\$ 836	\$ 390	\$ 885	\$ 1,509	\$ 290	\$ 1,009	\$ 15	\$ 668	\$ -
Compensation and benefits														
Payroll, benefits, and taxes + exp reimb	(408)	(31)	-	(556)	-	(471)	-	(561)	-	(535)	-	(625)	-	(460)
Cash bonuses	-	-	-	-	-	-	-	-	-	-	-	(3,394)	-	-
Total compensation and benefits	\$ (408)	\$ (31)	\$ -	\$ (556)	\$ -	\$ (471)	\$ -	\$ (561)	\$ -	\$ (535)	\$ -	\$ (4,019)	\$ -	\$ (460)
General overhead														
Outside legal (ordinary course)	(62)	-	(499)	-	(560)	-	-	(560)	-	-	-	(560)	-	-
Independent director fees	-	-	-	(210)	-	-	-	-	(210)	-	-	-	(210)	-
General overhead - critical vendors (pre-petition)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
General overhead - post-petition vendors	(158)	(1,233)	(275)	(275)	(225)	(225)	(225)	(225)	(340)	(340)	(340)	(340)	(222)	(222)
Total general overhead	\$ (220)	\$ (1,233)	\$ (774)	\$ (485)	\$ (785)	\$ (225)	\$ (225)	\$ (785)	\$ (550)	\$ (340)	\$ (340)	\$ (900)	\$ (432)	\$ (222)
Net change in cash due to operating activity	(589)	(1,264)	898	1,395	(723)	140	165	(461)	959	(585)	669	(4,904)	236	(682)
Re-org related - payments direct to professionals														
Debtor bankruptcy counsel	-	-	-	(300)	-	-	-	(720)	-	-	-	(720)	-	-
Debtor FA/CRO	-	-	-	-	-	-	-	(300)	-	-	-	(300)	-	-
Compensation consultant	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Committee counsel	-	-	(359)	(339)	-	-	-	(600)	-	-	-	(600)	-	-
Committee FA	-	-	(172)	(138)	-	-	-	(480)	-	-	-	(480)	-	-
Claims / noticing agent	-	-	-	-	-	-	-	(30)	-	-	-	(30)	-	-
Regulatory & compliance counsel	-	-	-	(100)	-	-	-	(100)	-	-	-	(100)	-	-
Mediation	-	-	-	-	-	-	-	-	-	-	-	-	-	-
US Trustee	-	-	-	-	-	-	-	(175)	-	-	-	-	-	-
Total re-org related	\$ -	\$ -	\$ (531)	\$ (877)	\$ -	\$ -	\$ -	\$ (2,405)	\$ -	\$ -	\$ -	\$ (2,230)	\$ -	\$ -
Net change in cash from ops + reorg costs	(589)	(1,264)	367	518	(723)	140	165	(2,866)	959	(585)	669	(7,134)	236	(682)
Investing cash flows (principal only on notes)														
Jefferies prime brokerage, net or Select Equity Fund funding	-	-	-	-	-	-	-	2,000	-	-	-	5,000	-	-
Third party fund capital call obligations	-	-	-	-	-	-	-	-	-	-	(1,650)	-	-	-
Third party fund expected distributions	-	-	-	-	-	-	-	-	-	-	400	-	-	-
Highland Capital Management Korea (capital call funding)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Multi Strategy Credit Fund	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Highland Capital Management Latin America	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Proceeds from outstanding notes	-	-	-	202	-	-	-	-	-	-	-	-	-	-
Divs, paydowns, misc from non-PB assets	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Purchases of other investments (non-PB)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Proceeds from other investments (non-PB)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Net change in cash due to investing activities	-	-	-	202	-	-	-	2,000	-	-	(1,250)	5,000	-	-
Financing cash flows														
Required equity distributions	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Equity contributions	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Existing debt paydowns	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Net change in cash due to financing activities	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Ending unrestricted operating cash	\$ 11,948	\$ 10,684	\$ 11,051	\$ 11,771	\$ 11,048	\$ 11,188	\$ 11,353	\$ 10,486	\$ 11,445	\$ 10,860	\$ 10,279	\$ 8,145	\$ 8,381	\$ 7,699

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EXHIBIT D

PROMISSORY NOTE

\$3,825,000

February 2, 2018

FOR VALUE RECEIVED, JAMES DONDERO ("*Maker*") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT LP ("*Payee*"), in legal and lawful tender of the United States of America, the principal sum of THREE MILLION, EIGHT HUNDRED AND TWENTY-FIVE THOUSAND and 00/100 Dollars (\$3,825,000.00), together with interest, on the terms set forth below (the "*Note*"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the long-term "*applicable federal rate*" (2.66%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Tax Loan. This Note is paid to the Maker to help satisfy any current tax obligations of a former partner or current partner.

5. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

6. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

7. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other

amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

8. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

9. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:



JAMES DONDERO

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EXHIBIT E

PROMISSORY NOTE

\$2,500,000

August 1, 2018

FOR VALUE RECEIVED, JAMES DONDERO ("**Maker**") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT LP ("**Payee**"), in legal and lawful tender of the United States of America, the principal sum of TWO MILLION, FIVE HUNDRED THOUSAND and 00/100 Dollars (\$2,500,000.00), together with interest, on the terms set forth below (the "**Note**"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the long-term "**applicable federal rate**" (2.95%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

Exhibit 3

Appx. 00552

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:



JAMES DONDERO

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EXHIBIT F

PROMISSORY NOTE

\$2,500,000

August 13, 2018

FOR VALUE RECEIVED, JAMES DONDERO ("*Maker*") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT LP ("*Payee*"), in legal and lawful tender of the United States of America, the principal sum of TWO MILLION, FIVE HUNDRED THOUSAND and 00/100 Dollars (\$2,500,000.00), together with interest, on the terms set forth below (the "*Note*"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the long-term "*applicable federal rate*" (2.95%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any; and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.


5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:



JAMES DONDERO

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EXHIBIT G

PROMISSORY NOTE

\$2,400,000.00

May 2, 2019

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP. (“**Maker**”) promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP (“**Payee**”), in legal and lawful tender of the United States of America, the principal sum of TWO MILLION FOUR HUNDRED THOUSAND and 00/100 Dollars (\$2,400,000.00), together with interest, on the terms set forth below (the “**Note**”). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the short-term “**applicable federal rate**” (2.39%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys’ Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys’ fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:



FRANK WATERHOUSE

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EXHIBIT H

PROMISSORY NOTE

\$5,000,000.00

May 3, 2019

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP. (“**Maker**”) promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP (“**Payee**”), in legal and lawful tender of the United States of America, the principal sum of FIVE MILLION and 00/100 Dollars (\$5,000,000.00), together with interest, on the terms set forth below (the “**Note**”). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the short-term “**applicable federal rate**” (2.39%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys’ Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys’ fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:



FRANK WATERHOUSE

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EXHIBIT I

PROMISSORY NOTE

\$150,000.00

March 28, 2018

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT SERVICES, INC. ("**Maker**") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP. ("**Payee**"), in legal and lawful tender of the United States of America, the principal sum of ONE HUNDRED AND FIFTY THOUSAND and 00/100 Dollars (\$150,000.00), together with interest, on the terms set forth below (the "**Note**"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the long-term "*applicable federal rate*" (2.88 %) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.


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7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:



HIGHLAND CAPITAL MANAGEMENT
SERVICES, INC.

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EXHIBIT J

PROMISSORY NOTE

\$200,000.00

June 25, 2018

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT SERVICES, INC. ("**Maker**") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP. ("**Payee**"), in legal and lawful tender of the United States of America, the principal sum of TWO HUNDRED THOUSAND and 00/100 Dollars (\$200,000.00), together with interest, on the terms set forth below (the "**Note**"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the long-term "*applicable federal rate*" (3.05 %) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:

A handwritten signature in blue ink, appearing to be "D. G.", is written over a horizontal line.

HIGHLAND CAPITAL MANAGEMENT
SERVICES, INC.

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EXHIBIT K

PROMISSORY NOTE

\$400,000

May 29, 2019

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT SERVICES, INC. (“**Maker**”) promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP (“**Payee**”), in legal and lawful tender of the United States of America, the principal sum of FOUR HUNDRED THOUSAND and 00/100 Dollars (\$400,000.00), together with interest, on the terms set forth below (the “**Note**”). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the short-term “**applicable federal rate**” (2.39%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys’ Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys’ fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:



FRANK WATERHOUSE

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EXHIBIT L

PROMISSORY NOTE

\$150,000

June 26, 2019

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT SERVICES, INC. (“**Maker**”) promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP (“**Payee**”), in legal and lawful tender of the United States of America, the principal sum of ONE HUNDRED AND FIFTY THOUSAND and 00/100 Dollars (\$150,000.00), together with interest, on the terms set forth below (the “**Note**”). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the short-term “**applicable federal rate**” (2.37%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys’ Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys’ fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:



FRANK WATERHOUSE

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EXHIBIT M

PROMISSORY NOTE

\$100,000

November 27, 2013

FOR VALUE RECEIVED, HCRE PARTNERS, LLC ("**Maker**") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP. ("**Payee**"), in legal and lawful tender of the United States of America, the principal sum of ONE HUNDRED THOUSAND and 00/100 Dollars (\$100,000.00), together with interest, on the terms set forth below (the "**Note**"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to 8.00% per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or

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performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:



HC RE PARTNERS, LLC

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EXHIBIT N

PROMISSORY NOTE

\$2,500,000

October 12, 2017

FOR VALUE RECEIVED, HCRE PARTNERS, LLC ("**Maker**") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP. ("**Payee**"), in legal and lawful tender of the United States of America, the principal sum of TWO MILLION, FIVE HUNDRED THOUSAND and 00/100 Dollars (\$2,500,000.00), together with interest, on the terms set forth below (the "**Note**"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to 8.00% per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or

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performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:



HCRE PARTNERS, LLC

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EXHIBIT O

PROMISSORY NOTE

\$750,000

October 15, 2018

FOR VALUE RECEIVED, HCRE PARTNERS, LLC ("**Maker**") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP. ("**Payee**"), in legal and lawful tender of the United States of America, the principal sum of SEVEN HUNDRED FIFTY THOUSAND and 00/100 Dollars (\$750,000.00), together with interest, on the terms set forth below (the "**Note**"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to 8.00% per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or

performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:


HCRE PARTNERS, LLC

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EXHIBIT P

PROMISSORY NOTE

\$900,000

September 25, 2019

FOR VALUE RECEIVED, HCRE PARTNERS, LLC ("**Maker**") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP. ("**Payee**"), in legal and lawful tender of the United States of America, the principal sum of NINE HUNDRED THOUSAND and 00/100 Dollars (\$900,000.00), together with interest, on the terms set forth below (the "**Note**"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to 8.00% per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or

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performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

MAKER:


HCRE PARTNERS, LLC

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EXHIBIT Q

PROMISSORY NOTE

\$20,247,628.02

May 31, 2017

THIS PROMISSORY NOTE (this “**Note**”) is in substitution for and supersedes in their entirety each of those certain promissory notes described in Exhibit A hereto, from Highland Capital Management Services, Inc., as Maker, and Highland Capital Management, L.P. as Payee (collectively, the “**Prior Notes**”), together with the aggregate outstanding principal and accrued and unpaid interest represented thereby.

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT SERVICES, INC. (“**Maker**”) promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, L.P. (“**Payee**”), in legal and lawful tender of the United States of America, the principal sum of TWENTY MILLION, TWO HUNDRED FORTY SEVEN THOUSAND, SIX HUNDRED TWENTY EIGHT AND 02/100 DOLLARS (\$20,247,628.02), together with interest, on the terms set forth below. All sums hereunder are payable to Payee at 300 Crescent Court, Suite 700, Dallas, Texas 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at the rate of two and seventy-five hundredths percent (2.75%) per annum from the date hereof until Maturity Date (hereinafter defined), compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable annually.

2. Payment of Principal and Interest. Principal and interest under this Note shall be payable as follows:

2.1 Annual Payment Dates. During the term of this Note, Borrower shall pay the outstanding principal amount of the Note (and all unpaid accrued interest through the date of each such payment) in thirty (30) equal annual payments (the “**Annual Installment**”) until the Note is paid in full. Borrower shall pay the Annual Installment on the 31st day of December of each calendar year during the term of this Note, commencing on the first such date to occur after the date of execution of this Note.

2.2 Final Payment Date. The final payment in the aggregate amount of the then outstanding and unpaid Note, together with all accrued and unpaid interest thereon, shall become immediately due and payable in full on December 31, 2047 (the “**Maturity Date**”).

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No

failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

9. Prior Notes. The original of each of the Prior Notes superseded hereby shall be marked "VOID" by Payee.

MAKER:

HIGHLAND CAPITAL MANAGEMENT
SERVICES, INC.

By: 

Name:

Title:

EXHIBIT A
PRIOR NOTES

Loan Date	Initial Note Amount	Interest Rate	Principal and Interest Outstanding as of May 31, 2017
5/29/15	\$500,000	2.30%	\$523,095
10/1/15	\$350,000	2.58%	\$315,500
10/2/15	\$310,000	2.58%	\$323,301
10/27/15	\$200,000	2.58%	\$208,228
10/28/15	\$200,000	2.58%	\$208,214
10/30/15	\$100,000	2.58%	\$104,093
11/23/15	\$100,000	2.57%	\$103,908
11/24/15	\$250,000	2.57%	\$259,752
2/10/16	\$2,000,000	2.62%	\$ 83,390
2/11/16	\$250,000	2.62%	\$258,524
4/5/16	\$6,000,000	2.25%	\$6,155,712
5/4/16	\$2,700,000	2.24%	\$2,764,954
7/1/16	\$30,000	2.18%	\$30,598
8/5/16	\$525,000	2.18%	\$534,375
8/22/16	\$250,000	2.18%	\$254,465
9/22/16	\$185,000	2.18%	\$187,773
12/12/16	\$7,700,000	2.26%	\$7,781,050
3/31/17	\$150,000	2.78%	\$150,697
	\$21,800,000		\$20,247,628.02

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EXHIBIT R

PROMISSORY NOTE

\$6,059,831.51

May 31, 2017

THIS PROMISSORY NOTE (this “**Note**”) is in substitution for and supersedes in their entirety each of those certain promissory notes described in Exhibit A hereto, from HCRE Partners, LLC, as Maker, and Highland Capital Management, L.P. as Payee (collectively, the “**Prior Notes**”), together with the aggregate outstanding principal and accrued and unpaid interest represented thereby.

FOR VALUE RECEIVED, HCREA PARTNERS, LLC (“**Maker**”) promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, L.P. (“**Payee**”), in legal and lawful tender of the United States of America, the principal sum of SIX MILLION, FIFTY NINE THOUSAND, EIGHT HUNDRED THIRTY ONE AND 51/100 DOLLARS (\$6,059,831.51), together with interest, on the terms set forth below. All sums hereunder are payable to Payee at 300 Crescent Court, Suite 700, Dallas, Texas 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at the rate of eight percent (8.00%) per annum from the date hereof until Maturity Date (hereinafter defined), compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable annually.

2. Payment of Principal and Interest. Principal and interest under this Note shall be payable as follows:

2.1 Annual Payment Dates. During the term of this Note, Borrower shall pay the outstanding principal amount of the Note (and all unpaid accrued interest through the date of each such payment) in thirty (30) equal annual payments (the “**Annual Installment**”) until the Note is paid in full. Borrower shall pay the Annual Installment on the 31st day of December of each calendar year during the term of this Note, commencing on the first such date to occur after the date of execution of this Note.

2.2 Final Payment Date. The final payment in the aggregate amount of the then outstanding and unpaid Note, together with all accrued and unpaid interest thereon, shall become immediately due and payable in full on December 31, 2047 (the “**Maturity Date**”).

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same

shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

9. Prior Notes. The original of each of the Prior Notes superseded hereby shall be marked "VOID" by Payee.

MAKER:

HCRE PARTNERS, LLC

By: 

Name: James Dondero

Title:

EXHIBIT A**PRIOR NOTES**

Loan Date	Initial Note Amount	Interest Rate	Principal and Interest Outstanding as of May 31, 2017
1/9/14	\$100,000.00	8.00%	\$108,000.00
1/29/14	\$600,000.00	8.00%	\$648,000.00
3/10/14	\$2,000,000.00	8.00%	\$2,009,643.84
3/28/14	\$50,000.00	8.00%	\$54,000.00
1/26/15	\$1,500,000.00	8.00%	\$1,545,356.16
4/2/15	\$1,500,000.00	8.00%	\$1,545,356
	\$5,750,000.00		\$6,059,831.51

EXHIBIT 213

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re	§	
	§	
HIGHLAND CAPITAL MANAGEMENT,	§	Chapter 11
L.P.,	§	
	§	Case No. 19-34054-sgj11
Debtor.	§	
<hr/>		
HIGHLAND CAPITAL MANAGEMENT,	§	
L.P.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Adv. No. 21-03004
	§	
HIGHLAND CAPITAL MANAGEMENT	§	
FUND ADVISORS, L.P.	§	
	§	
Defendant.	§	

DEFENDANT'S MOTION TO WITHDRAW THE REFERENCE

Davor Rukavina, Esq.
Texas Bar No. 24030781
Julian P. Vasek, Esq.
Texas Bar No. 24070790
MUNSCH HARDT KOPF & HARR, P.C.
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**COUNSEL FOR HIGHLAND CAPITAL
MANAGEMENT FUND ADVISORS, L.P.**



1934054210413000000000007

Appx. 00596

DEFENDANT’S MOTION TO WITHDRAW THE REFERENCE

TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

COMES NOW Highland Capital Management Fund Advisors, L.P., the defendant (the “Defendant”) in the above styled and numbered adversary proceeding (the “Adversary Proceeding”), and files this its *Defendant’s Motion to Withdraw the Reference* (the “Motion”), respectfully stating as follows:

This Adversary Proceeding was automatically referred to the Bankruptcy Court pursuant to 28 U.S.C. § 157(a) and District Court Miscellaneous Order No. 33, *Order of Reference of Bankruptcy Cases and Proceedings Nunc Pro Tunc*.

Pursuant to 28 U.S.C. § 157(d), and for the reasons given in the accompanying *Brief in Support of the Defendant’s Motion to Withdraw the Reference*, as supported by the *Appendix In Support of Defendant’s Motion to Withdraw the Reference*, filed contemporaneously herewith and all of which is incorporated herein by reference, the Defendant requests that the Court withdraw from the Bankruptcy Court the reference (*i.e.*, the referral) of the Adversary Proceeding, in which case the Adversary Proceeding will continue as a Civil Action in the District Court.

WHEREFORE, PREMISES CONSIDERED, the Defendant respectfully requests that the District Court enter an order: (i) granting the Motion; (ii) withdrawing from the Bankruptcy Court the reference of this Adversary Proceeding; and (iii) granting the Defendant such other and further relief to which it shows itself to be entitled.

RESPECTFULLY SUBMITTED this 13th day of April, 2021.

MUNSCH HARDT KOPF & HARR, P.C.

By: /s/ Davor Rukavina _____

Davor Rukavina, Esq.
Texas Bar No. 24030781
Julian P. Vasek, Esq.
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**COUNSEL FOR HIGHLAND CAPITAL
MANAGEMENT FUND ADVISORS, L.P.**

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that he discussed the relief requested herein with Jeff Pomerantz, Esq., counsel for record for the Plaintiff, who informed the undersigned that the Plaintiff opposes said relief.

/s/ Davor Rukavina _____

Davor Rukavina

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this the 13th day of April, 2021, true and correct copies of this document were electronically served by the Court's ECF system on parties entitled to notice thereof, including on the Plaintiff through its counsel of record.

/s/ Davor Rukavina _____

Davor Rukavina

EXHIBIT 214



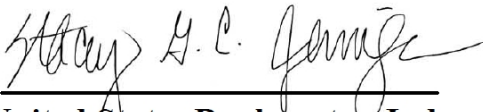
CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed July 8, 2021


United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT	§	CASE NO. 19-34054-SGJ-11
L.P.,	§	(CHAPTER 11)
DEBTOR.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT	§	
L.P.,	§	ADVERSARY NO. 21-03004
PLAINTIFF,	§	(CIV. ACTION #3:21-CV-00881-X)
	§	
VS.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT	§	
FUND ADVISORS, L.P.,	§	
DEFENDANT.	§	

REPORT AND RECOMMENDATION TO DISTRICT COURT PROPOSING THAT IT:
(A) GRANT DEFENDANT'S MOTION TO WITHDRAW THE REFERENCE AT SUCH
TIME AS BANKRUPTCY COURT CERTIFIES THAT ACTION IS TRIAL READY;
AND (B) DEFER PRETRIAL MATTERS TO BANKRUPTCY COURT



I. INTRODUCTION

The above-referenced adversary proceeding (the “Adversary Proceeding”) is related to the bankruptcy case of Highland Capital Management, L.P. (the “Bankruptcy Case”).¹ Highland Capital Management, L.P. (the “Debtor” or “Highland”) filed a voluntary Chapter 11 petition on October 16, 2019 in the United States Bankruptcy Court of Delaware. That court subsequently entered an order transferring venue to the Northern District of Texas, Dallas Division, on December 4, 2019. A Chapter 11 plan was confirmed by the bankruptcy court on February 22, 2021. The chapter 11 plan has been appealed by the Defendant in this action, Highland Capital Management Fund Advisors (“HCMFA-Defendant”), and certain parties related to it. The appeal of the plan is now pending before the Fifth Circuit, but no stay pending appeal has been granted.

On January 22, 2021, shortly before its Chapter 11 plan was confirmed, the Debtor, as Plaintiff, brought this Adversary Proceeding against HCMFA-Defendant. The Adversary Proceeding pertains to two promissory notes (collectively, the “Notes”) executed by HCMFA-Defendant in favor of the Debtor in 2019. Each of the Notes were demand notes. On December 3, 2020, the Debtor sent HCMFA-Defendant a letter demanding payment by December 11, 2020, as allowed under the terms of the notes. Following HCMFA-Defendant’s failure to pay on the Notes in response to the demand letter, the Debtor brought this action to collect on the Notes. The Debtor’s Chapter 11 plan contemplates collection on these Notes (as well as several other notes of parties related to HCMFA-Defendant) as part of its funding to pay creditors.

¹ Bankruptcy Case No. 19-34054.

Under the United States District Court for the Northern District of Texas' standing order of reference², proceedings arising in, or related to, a case under Title 11 are automatically referred to the bankruptcy court. HCMFA-Defendant submitted a *Motion for Withdrawal the Reference*³ (the "Motion") and *Brief in Support of Motion to Withdraw the Reference*⁴ (the "Brief in Support") seeking to have the reference withdrawn, such that this Adversary Proceeding would be adjudicated in the District Court. The bankruptcy court conducted a status conference concerning the Motion, pursuant to Local Bankruptcy Rule 5011-1, on May 25, 2021.

The bankruptcy court submits the following report and recommendation to the District Court, ultimately recommending that the Motion be granted, ***but only at such time as the bankruptcy court certifies to the District Court that the lawsuit is trial ready***. The bankruptcy court further recommends that the District Court ***defer to the bankruptcy court the handling of all pretrial matters***.

II. NATURE OF THE ADVERSARY PROCEEDING

a. The Complaint and Procedural History

The Debtor commenced this Adversary Proceeding by filing its *Complaint for (I) Breach of Contract and (II) Turnover of Property of the Debtor's Estate*⁵ on January 22, 2021. The Debtor's Complaint asserts two causes of action: (1) a breach of contract claim ("Count 1") and (2) a turnover action under 11 U.S.C. § 542(b) for the amounts owed on the Notes ("Count 2"). The principal amounts and execution dates for each of the two Notes were: (i) \$2,400,000, executed May 2, 2019, and (ii) \$5,000,000, executed May 3, 2019. The Debtor now seeks monetary damages totaling \$7,687,653.07, plus accrued but unpaid interest and cost of collection. Because

² Misc. Order No. 33.

³ Adversary Case No. 21-03004, Dkt. 20.

⁴ Adversary Case No. 21-03004, Dkt. 21.

⁵ Adversary Case No. 21-03004, Dkt. 1.

the Debtor alleges the amounts due on the Notes are property of its estate, it argues that turnover pursuant to 11 U.S.C. § 542(b) is appropriate.

After being served with summons on January 25, 2021, HCMFA-Defendant filed its *Original Answer*⁶ on March 1, 2021 before subsequently filing its *Amended Answer*⁷ on July 6, 2021.

HCMFA-Defendant filed two proofs of claim in the Bankruptcy Case, Proof of Claim Nos. 95 and 119. Proof of Claim No. 95 was based on alleged overpayments made by HCMFA-Defendant to the Debtor under a shared services agreement. Proof of Claim No. 119 was based on alleged overpayments made by HCMFA-Defendant to the Debtor under a payroll reimbursement agreement. On October 9, 2020, the bankruptcy court entered a *First Supplemental Order Sustaining First Omnibus Claims Objection*⁸, which disallowed both of HCMFA-Defendant's proofs of claim. The HCMFA-Defendant filed an application for an administrative expense claim on January 24, 2021, relating to services it alleges the Debtor did not perform under a shared services agreement. The Debtor has since filed an objection to the application and the matter is set for trial on September 28, 2021. The administrative expense claim *does not directly relate to the causes of action for collection under the Notes*. Similarly, the disallowed *proofs of claim did not relate to the Notes*.

b. The Motion to Withdraw the Reference, Response Opposed, and Reply

On April 15, 2021, HCMFA-Defendant filed the Motion. As a result, the above-captioned civil action was created in the District Court. On May 4, 2021, the Debtor filed its *Response Opposed to Defendant's Motion to Withdraw the Reference*⁹ (the "Response Opposed"). On May

⁶ Adversary Case No. 21-03004, Dkt. 6.

⁷ Adversary Case No. 21-03004, Dkt. 48.

⁸ Bankruptcy Case No. 19-34054, Dkt. 1155.

⁹ Adversary Case No. 21-03004, Dkt. 28.

18, 2021, HCMFA-Defendant filed its *Reply in Support of the Motion to Withdraw the Reference*¹⁰ (the “Reply”). The bankruptcy court held a status conference, as required by Local Bankruptcy Rule 5011-1, on May 25, 2021, to assist in the bankruptcy court’s preparation of this Report and Recommendation.

i. The Movant’s Position

HCMFA-Defendant argues there is cause shown for permissive withdrawal of the reference because: (1) the contract claim is a purely state law, non-core claim; (2) the turnover claim, under the Bankruptcy Code, is wholly derivative of the contract claim, as the amount to be turned over is based on the resolution of the contract claim; and (3) efficiency, uniformity and forum shopping factors all favor withdrawal.¹¹

Further, HCMFA-Defendant contends it has made a demand for a jury trial and has not consented, expressly or impliedly, to the equitable jurisdiction of the bankruptcy court to enter final orders in the Adversary Proceeding or hold a jury trial. HCMFA-Defendant further argues it has never filed a proof of claim related to the Notes, thus negating any argument it has consented to the bankruptcy court having jurisdiction over the litigation of the Notes.

Finally, HCMFA-Defendant alleges that permissive withdrawal is proper, because the turnover claim is being used as an attempt to relabel a non-core breach of contract claim to place jurisdiction within the bankruptcy court.¹²

As far as timing, HCMFA-Defendant requests that the District Court immediately withdraw the reference and hear all pre-trial matters until the parties are trial-ready.

¹⁰ Adversary Case No. 21-03004, Dkt. 30.

¹¹ Adversary Case No. 21-03004, Dkt. 21 at 5-11.

¹² *Id.* at 8-9; see *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 61 (1989).

ii. *The Debtor-Plaintiff's Position*

The Debtor argues that there is no cause shown for permissive withdrawal because a turnover action under Section 542(b) of the Bankruptcy Code is an inherently core claim. The Notes, as argued, are already property of the bankruptcy estate, as matured and payable on December 11, 2020, and the turnover action only concerns federal bankruptcy law.¹³ The Debtor argues that the defenses and disputes raised by HCMFA-Defendant do not restrict the Debtor's ability to collect property of the estate under 11 U.S.C. § 542(b).¹⁴

The Debtor does not directly, in its Response, address whether jury trial rights exist for HCMFA-Defendant. Rather, the Debtor focuses on the core nature of the turnover action and the forum shopping attempts by HCMFA-Defendant.

As far as timing, the Debtor argues that, if the court finds permissive withdrawal of the reference is appropriate, the reference should not be withdrawn until after the parties are trial-ready, and all pretrial matters should be handled by the bankruptcy court until such time.

III. THE BREACH OF CONTRACT CLAIMS AT THE CENTER OF THE ADVERSARY PROCEEDING ARE NONCORE CLAIMS, AND THE PENDING ADMINISTRATIVE EXPENSE CLAIM OF HCMFA-DEFENDANT IS UNRELATED TO THEM

Permissive withdrawal of the reference is described in 28 U.S.C. § 157(d) as follows: “The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown.” The Bankruptcy Code does not define “cause shown,” but the United States Court of Appeal for the Fifth Circuit, interpreting

¹³ See *Tow v. Park Lake Cmty's, LP*, 2018 U.S. Dist. LEXIS 1720, at *3-*5 (S.D. Tex. Jan. 4, 2018); see also *Porretto v. Nelson (In re Porretto)*, 2012 Bankr. LEXIS 4919, at *11-*12 (Bankr. S.D. Tex. Oct. 18, 2012); see also *Romo v. Monetmayor (In re Montemayor)*, 547 B.R. 684, 692 (Bankr. S.D. Tex. 2016) (bankruptcy court had authority under *Stern* to issue a final order in an action brought pursuant to Section 542(b), because an action “to turnover assets belonging to the bankruptcy estate [is] a matter which solely concerns federal bankruptcy law”).

¹⁴ See *Tow*, 2018 U.S. Dist. LEXIS 1720, at *3-*5; see also *Shaia v. Taylor (In re Connelly)*, 476 B.R. 223, 230 (Bankr. E.D. Va. 2012).

the Supreme Court case of *Northern Pipeline Const. Co. v. Marathon Pipe Line Co.*, has identified a number of factors for courts to consider in determining whether permissive withdrawal of the reference is appropriate: (1) whether the matter is core or noncore; (2) whether the matter involves a jury demand; (3) whether withdrawal would further uniformity in bankruptcy administration; (4) whether withdrawal would reduce forum-shopping and confusion; (5) whether withdrawal would foster economical use of debtors' and creditors' resources; and (6) whether withdrawal would expedite the bankruptcy process.¹⁵ Courts in this District have placed an emphasis on the first two factors.¹⁶

As explained by the Supreme Court in *Stern v. Marshall*, Congress has divided bankruptcy *proceedings* (i.e., adversary proceedings or contested matter within a bankruptcy case)—over which there is bankruptcy subject matter jurisdiction—into three different categories: (a) those that “aris[e] under” Title 11; (b) those that “aris[e] in” a Title 11 case; and (c) those that are “related to” a case under Title 11.¹⁷ Further, those that arise under Title 11 or arise in a Title 11 case are defined as “core” matters¹⁸ and those that are merely “related to” a Title 11 case are defined as “noncore” matters. The significance of the “core”/“noncore” distinction is that bankruptcy courts may statutorily enter final judgments in “core” proceedings in a bankruptcy case, while in “noncore” proceedings, the bankruptcy courts instead may only (absent consent from all of the parties) submit proposed findings of fact and conclusions of law to the district court, for that court's review and issuance of final judgment. This is the statutory framework collectively set forth in 28 U.S.C. § 1334 and 28 U.S.C. § 157. But while a proceeding may be “core” in nature, under 28

¹⁵ *Holland Am. Ins. Co. v. Succession of Roy*, 777 F.2d 992, 998-99 (5th Cir. 1985); *Mirant Corp. v. The Southern Co.*, 337 B.R. 107, 115-23 (N.D. Tex. 2006); 458 U.S. 50 (1982).

¹⁶ See *Mirant*, 337 B.R. at 115-122.

¹⁷ 28 U.S.C. § 1334(b); *Stern v. Marshall*, 564 U.S. 462, 473-474 (2011).

¹⁸ *Stern*, 564 U.S. at 473-474. Core proceedings include, but are not limited to, 16 different types of matters, including “counterclaims by [a debtor's] estate against persons filing claims against the estate.” 28 U.S.C. § 157(b)(2)(C).

U.S.C. § 157(b)(2), and the bankruptcy court, therefore, has the *statutory* power to enter a final judgment on the claim under 28 U.S.C. § 157(b)(1), *Stern* instructs that any district court, in evaluating whether a bankruptcy court has the ability to issue final orders and judgments, must resolve not only: (a) whether the bankruptcy court has the statutory authority under 28 U.S.C. § 157(b) to issue a final judgment on a particular claim; but also (b) whether the conferring of that authority on an Article I bankruptcy court is *constitutional* (and this turns on whether “the action at issue stems from the bankruptcy itself or would necessarily be resolved in the claims allowance process”).¹⁹

With respect to the claims asserted against HCMFA-Defendant, it might be argued that both counts asserted against it are *statutorily* core in nature.²⁰ While Count 1 is a breach of contract claim for collection of amounts due under promissory notes—one of the simplest forms of a state law lawsuit—it might be argued that Count 1 is statutorily core under the catchall provision of 28 U.S.C. § 157(b)(2)(O), as the resolution of the claim would be “affecting the liquidation of the assets of the estate.” However, this position would not pass constitutional muster. The cause of action does not stem from the bankruptcy itself (*i.e.*, it stems from alleged defaults on pre-petition notes) and would not be resolved through the claims allowance process (*since no pending proof of claim exists and the administrative expense claim is not directly related to the Notes*). In other words, the resolution of Count 1 is not so inextricably intertwined with the resolution of HCMFA-Defendant’s still-remaining administrative expense claim so as to confer constitutional authority on the bankruptcy court to enter a final judgment on the breach of contract claims.

Count 2, the turnover cause of action, is brought pursuant to 11 U.S.C. § 542(b) and is listed as statutorily core under 28 U.S.C. § 157(b)(2)(E). If Count 2 were freestanding and the debts due

¹⁹ *Stern*, 564 U.S. at 499.

²⁰ 28 U.S.C. § 157(b)(2)(E), (O).

under the Notes were undisputed, it is unrefuted by HCMFA-Defendant that a turnover action under 11 U.S.C. § 542(b) would be both a statutory and constitutional core claim. ***The issue is whether a turnover action to collect on a disputed pre-petition promissory note can be viewed as a core claim.*** There is a split in authority on this issue. The Debtor cites authority that a turnover action is a core claim when collecting ***matured*** debts, as property of the estate, regardless of whether the indebtedness is ***disputed***.²¹ In contrast, HCMFA-Defendant cites authority that the scope of turnover claims under the Bankruptcy Code should not be expanded to encompass debts in dispute that arose outside of bankruptcy, including authority from this court.²²

This court views the turnover claim as derivative of the breach of contract claims. The breach of contract claims are clearly non-core, and the bankruptcy court lacks constitutional authority to confer jurisdiction over them (absent consent—which does not exist here). A turnover action under 11 U.S.C. § 542(b) cannot be tacked onto a complaint so as to confer authority in the bankruptcy court to adjudicate an otherwise non-core claim. To hold otherwise would run counter to the dictates of the Supreme Court in *Marathon*.

In summary, this court believes that the turnover claim in the Complaint, to collect on a disputed indebtedness under the Notes, “do[es] not fall within the scope of turnover actions as

²¹ *Shaia*, 476 B.R. at 230 (“To properly constitute a core proceeding under § 157(b)(2)(E), the debt must be ‘matured, payable on demand, or payable on order.’ ‘Matured’ refers to ‘debts that are presently payable, as opposed to those that are contingent and become payable only upon the occurrence of a certain act or event.’ While the Defendants assert they are not indebted to the Trustee, it is simply not relevant that the Defendants dispute liability on the instrument. The presence of a dispute does not preclude a debt from being matured. ... A cause of action is a turnover proceeding under § 542(b) of the Bankruptcy Code where it seeks collection rather than creation or liquidation of a matured debt.”); see also *In re Willington Convalescent Home, Inc.*, 850 F.2d at 52 n.2 (“The mere fact that Connecticut denies that it owes the matured debt for Willington’s services because of a recoupment right ‘does not take the trustee’s action outside the scope of section 542(b)’”).

²² *In re Se. Materials, Inc.*, 467 B.R. 337, 354 (Bankr. M.D.N.C. 2012) (“The distinction is when ‘an adversary proceeding presents a bona fide dispute as to liability, the matter cannot be viewed as a turnover proceeding’”); *In re Sateco, Inc.*, 58 B.R. 781, 789 (Bankr. N.D. Tex. 1986) (“[T]his Court holds that actions to collect accounts receivable based upon state law contract principles do not fall within the scope of turnover actions as contemplated by § 542 and § 157(b)(2)(E), absent a final judgment from a court of competent jurisdiction, a stipulation, or some other binding determination of liability.”).

contemplated by § 542 and § 157(b)(2)(E),” absent a judgment or stipulation resolving the dispute as to the indebtedness.²³ Thus, the turnover claim, as brought, is not a core claim that the bankruptcy court can finally adjudicate, absent the consent of all parties.

IV. JURY TRIAL RIGHTS AND DEMAND

Pursuant to 28 U.S.C. § 157(e), if a litigant has the right to a jury trial under applicable non-bankruptcy law, a bankruptcy court may conduct the jury trial only if: (a) the matters to be finally adjudicated fall within the scope of bankruptcy subject matter jurisdiction; (b) the district court of which the bankruptcy court is a unit authorizes the bankruptcy court to do so; and (c) all of the parties consent.²⁴

Starting first with whether a right to a jury trial even exists, the Seventh Amendment, of course, provides a jury trial right in cases in which the value in controversy exceeds twenty dollars and the cause of action is to enforce statutory rights that are at least analogous to rights that were tried at law in the late 18th century English courts.²⁵ Suits “at law” refers to “suits in which legal rights were to be ascertained and determined” as opposed to “those where equitable rights alone were recognized and equitable remedies were administered.”²⁶ This analysis requires two steps: (1) a comparison of the “statutory action to 18th century actions brought in the courts of England prior to the merger of the courts of law and equity”; and (2) whether the remedy sought is “legal or equitable in nature . . . [t]he second stage of this analysis” being “more important than the first.”²⁷

²³ *Satelco*, 58 B.R. at 789.

²⁴ “If the right to a jury trial applies in a proceeding that may be heard under this section by a bankruptcy judge, the bankruptcy judge may conduct the jury trial if specially designated to exercise such jurisdiction by the district court and with the express consent of all the parties.” 28 U.S.C. § 157(e) (West 2019).

²⁵ See *City of Monterey v. Del Monte Dunes*, 526 U.S. 687, 708 (1999).

²⁶ *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 41 (1989).

²⁷ See *Levine v. M & A Custom Home Builder & Developer, LLC*, 400 B.R. 200, 205 (S.D. Tex. 2008) (quoting *Granfinanciera*, 492 U.S. at 42).

It is well established that the act of filing a proof of claim can operate to deprive a creditor of a jury trial right, by subjecting a claim, that would otherwise sound only in law, to the equitable claims allowance process.²⁸ Thus, if both of HCMFA-Defendant's proofs of claims were *pending*, it would have consented to the bankruptcy court's equitable jurisdiction and waived its right to a jury trial as to the subject matter of the *pending* proofs of claim.²⁹ However, as earlier noted, prior to the commencement of this Adversary Proceeding on January 22, 2021, HCMFA-Defendant had both of its proofs of claim disallowed on October 9, 2020. The pending trial over the administrative expense claim sought by HCMFA-Defendant is separate from the collection under the Notes. Without a pending claim related to the Notes, the breach of contract claims is precisely the kind of action that would sound in law rather than in equity. By not having a filed proof of claim related to the Notes, HCMFA-Defendant never subjected the Notes to the claims allowance process of the bankruptcy court and preserved its right to a jury trial on the Notes.³⁰

To reiterate, HCMFA-Defendant's remaining administrative expense claim is not directly related to the collection on the Notes, and it has not otherwise consented to the jurisdiction of the bankruptcy court for claims related to the Notes. HCMFA-Defendant has also not consented to the bankruptcy court conducting a jury trial pursuant to 11 U.S.C. § 157(e).

In summary, HCMFA-Defendant's lack of waiver of its jury trial rights, expressly or impliedly, is further reason why the bankruptcy court does not believe it can finally adjudicate the claims in the Adversary Proceeding.

²⁸ See *Langenkamp v. Culp*, 498 U.S. 42, 44-45 (1990).

²⁹ *Id.*

³⁰ *Smith v. Dowden*, 47 F.3d 940, 943 (8th Cir. 1995) (“[T]he successful withdrawal of a claim pursuant to Fed. R. Bankr. P. 3006 prior to the trustee's initiation of an adversarial proceeding renders the withdrawn claim a legal nullity and leaves parties as if the claim had never been brought.”); *In re Goldblatt's Bargain Stores, Inc.*, No. 05 C 03840, 2005 WL 8179250, at *5 (N.D. Ill. Dec. 6, 2005) (claims withdrawn before adversary proceeding are as if never filed); see generally, *In re Manchester, Inc.*, No. 08-30703-11-BJH, 2008 WL 5273289, at *3-6 (Bankr. N.D. Tex. Dec. 19, 2008) (permissible to withdraw a claim to preserve jury trial right).

V. PENDING MATTERS

No dispositive motions, or any other motions, remain pending at this time. The court has not granted a stay pending resolution of the Motion in the Adversary Proceeding.³¹ At this point, the parties are not trial-ready.

VI. RECOMMENDATION

In light of: (a) the noncore, related-to claims in the Complaint; (b) the lack of a proof of claim or any other claim related to the Notes asserted by HCMFA-Defendant; and (c) the lack of any other consent by HCMFA-Defendant to the equitable jurisdiction of the bankruptcy court related to the Notes, the bankruptcy court recommends the District Court: refer all pre-trial matters to the bankruptcy court, and grant the Motion upon certification by the bankruptcy court that the parties are trial-ready.

With regard to such pretrial matters, the bankruptcy court further recommends that, to the extent a dispositive motion is brought that the bankruptcy court determines should be granted and would finally dispose of claims in this Adversary Proceeding, the bankruptcy court should submit a report and recommendation to the District Court for the District Court to adopt or reject.

*****END OF REPORT AND RECOMMENDATION*****

³¹ The court did grant a stay pending resolution of the motion to withdraw the reference in the related case of *Highland Capital Management, L.P. v. Dondero* (Adversary Case No. 21-03003).

EXHIBIT 215

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Julian P. Vasek, Esq.
Texas Bar No. 24070790
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COUNSEL FOR HIGHLAND CAPITAL
MANAGEMENT FUND ADVISORS, L.P.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re	§	
	§	
HIGHLAND CAPITAL MANAGEMENT,	§	Chapter 11
L.P.,	§	
	§	Case No. 19-34054-sgj11
Debtor.	§	
<hr/>		
HIGHLAND CAPITAL MANAGEMENT,	§	
L.P.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Adv. No. 21-03004
	§	
HIGHLAND CAPITAL MANAGEMENT	§	
FUND ADVISORS, L.P.	§	
	§	
Defendant.	§	

DEFENDANT’S MOTION FOR LEAVE TO AMEND ANSWER

TO THE HONORABLE COURT:

COMES NOW Highland Capital Management Fund Advisors, L.P., the defendant (the “Defendant”) in the above styled and numbered adversary proceeding (the “Adversary Proceeding”), and files this its *Defendant’s Motion for Leave to Amend Answer* (the “Motion”), respectfully stating as follows:



I. SUMMARY

1. This Adversary Proceeding concerns two promissory notes allegedly payable by the Defendant to Highland Capital Management, L.P. (the “Plaintiff”) in the combined amounts of \$7.4 million (the “Notes”). Now that the Defendant has access to former employees of the Plaintiff and to various books and records, the Defendant has learned that the Notes were unauthorized, represent a mutual mistake, and were never intended as debt, but rather that the Plaintiff was compensating the Defendant for the Plaintiff’s own liability to the Defendant for causing a serious valuation error. Accordingly, and not having learned of these facts until recently, the Defendant respectfully seeks leave to assert resulting affirmative defenses.

II. PROCEDURAL BACKGROUND

2. On January 22, 2021, the Plaintiff filed its *Complaint for (i) Breach of Contract and (ii) Turnover of Property of the Debtor’s Estate* (the “Complaint”), thereby initiating this Adversary Proceeding.

3. On March 1, 2021, the Defendant filed its *Defendant’s Original Answer* (the “Answer”). The Answer does not contain any affirmative defenses.

4. The agreed scheduling order entered in this Adversary Proceeding does not contain a deadline to amend operative pleadings. *See* Docket No. 13.

5. This Adversary Proceeding is non-core and the Defendant has not consented to the Bankruptcy Court’s entry of final orders or judgment. The Defendant has asserted a right to trial by jury.

6. The Defendant has filed a motion for withdrawal of the reference, which motion remains pending, and this Motion is subject to, and without prejudice to, any and all arguments raised in support of the withdrawal of the reference.

III. FACTUAL BACKGROUND

7. This Motion is supported by the Declaration of Dennis C. Sauter (the “Sauter Declaration”), attached hereto as Exhibit “A” and incorporated herein.

8. The Defendant is a registered advisor under the Investment Advisors Act of 1940. Sauter Declaration at ¶ 4. As such, the Defendant advises various independent funds which, in turn, are investment vehicles for a large number of investors. *See id.* One such fund was Highland Global Allocation Fund (“HGAF”). *Id.* at ¶ 24.

9. Prior to the end of February, 2021, and during all times relevant to the Notes, the Plaintiff and the Defendant were parties to that certain *Second Amended and Restated Shared Services Agreement* dated February 8, 2013 (the “Shared Services Agreement”). *Id.* at ¶ 6. This was standard business practices for the Plaintiff and various other affiliated companies, including other advisers, within the Plaintiff’s “complex” of business: the Plaintiff would employ most of the employees and then share those employees with the Defendant and other “complex” entities, in exchange for payments by the Defendant and such other entities. *Id.* at ¶ 7. The Defendant otherwise had very few direct employees. *Id.* at ¶ 5. Thus, under the Shared Services Agreement, employees of the Plaintiff (many of whom were highly trained and specialized) provided many of the key services to the Defendant on an as-needed basis. *Id.* at ¶ 8. These services included legal, accounting, regulatory, compliance, IT, valuation, and tax services, among others. *Id.* at ¶ 8. Additionally, under the Shared Services Agreement the Debtor provided critical electronic infrastructure to HCMFA and other “complex” entities, such that the books and records, and e-mail communications, of HCMFA were actually stored. *Id.* at ¶ 8.

10. In March, 2018, HGAF sold equity interests it held in TerreStar. *Id.* at ¶ 24. As part of this, it was necessary to calculate the “net asset value” (“NAV”) of these securities and of

HGAF assets. *Id.* at ¶ 24. The Defendant was responsible for advising on the NAV. In turn, pursuant to the Shared Services Agreement, the Plaintiff was responsible to the Defendant to calculate the NAV, and the Plaintiff had several employees charged with these and similar calculations as part of the Plaintiff's routine business services and as part of what the Plaintiff regularly provided to the Defendant and affiliated companies. *Id.* at ¶ 24.

11. The Plaintiff made a mistake in calculating the NAV (the "NAV Error"). *Id.* at ¶ 25. The NAV Error was discovered in early 2019 as HGAF was being converted from an open-ended fund to a closed-ended fund. *Id.* at ¶ 25. The Securities and Exchange Commission opened an investigation, and various employees and representatives of the Plaintiff, the Defendant, and HGAF worked with the SEC to correct the error and to compensate HGAF and the various investors in HGAF harmed by the NAV Error. *Id.* at ¶ 25. Ultimately, and working with the SEC, the Plaintiff determined that the losses from the NAV Error to HGAF and its shareholders amounted to \$7.5 million: (i) \$6.1 million for the NAV Error itself, as well as rebating related advisor fees and processing costs; and (ii) \$1.4 million of losses to the shareholders of HGAF. *Id.* at ¶ 26.

12. The Defendant accepted responsibility for the NAV Error and paid out \$5,186,496 on February 15, 2019 and \$2,398,842 on May 21, 2019. *Id.* at ¶ 27. In turn, the Plaintiff accepted responsibility to the Defendant for having caused the NAV Error, and the Plaintiff ultimately, whether through insurance or its own funds, compensated the Defendant for the above payments. *Id.* at ¶ 28. The Defendant is unsure as to the flow of funds; *i.e.* whether the Plaintiff paid HGAF directly or through the Defendant, and is awaiting discovery from the Plaintiff on that point. Either way, the Plaintiff accepted, and paid, approximately \$7.5 million to compensate for the NAV Error that it caused.

13. Frank Waterhouse (“Waterhouse”) was the Chief Financial Officer of both the Plaintiff and the Defendant. *Id.* at ¶ 29. Waterhouse prepared and signed the Notes. Interestingly, Waterhouse did not sign the Notes in a representative capacity for the Defendant, but rather as:

MAKER:



FRANK WATERHOUSE

This was highly unusual and indicates that the Plaintiff’s legal department did not prepare the Notes. It is also highly unusual that the Notes were not signed by Jim Dondero or by the general partner of the Defendant.

14. Waterhouse was not authorized to execute the Notes on behalf of the Defendant, and he was not authorized to lend funds by the Plaintiff. *Id.* at ¶ 22. It appears that what happened is that Waterhouse, either for some internal accounting purpose or because funds were flowing from the Plaintiff to the Defendant, believed that some document was necessary or that what was being funded was a loan, so he unilaterally, and in mistake, prepared and signed the Notes. *Id.* at ¶ 30. In short, Waterhouse made a mistake, there was no loan, there was no return consideration for any loan, and the Notes, if anything, are a mutual mistake and are void. *Id.* at ¶ 30 & 32.

15. The Defendant only learned of these facts in April, 2021, and was therefore unable to assert defenses and affirmative defenses based on these facts at the time that it filed its Answer. *Id.* at ¶ 21. This is because the Defendant’s own employees had no knowledge of the facts and circumstances surrounding the Notes; the Plaintiff, through its CEO Mr. Seery, had prohibited employees of the Plaintiff from discussing matters with the Defendant that may relate to controversies or litigation under penalty of termination; the Defendant did not have access to all

of its books and records, as they were in the possession of the Plaintiff pursuant to the Shared Services Agreement; and an injunction from the Bankruptcy Court prohibited Mr. Dondero from “indirectly” communicating with the Plaintiff’s employees (Mr. Dondero controls the Defendant). *Id.* at ¶¶ 13-17.

16. By mid-April, 2021, the Plaintiff has terminated most of its employees, those employees formed their own company, and the Defendant retained that company to provide services to the Defendant basically in continuation of the services provided by the Plaintiff pursuant to the Shared Services Agreement. *Id.* at ¶¶ 19-20. Additionally, the Plaintiff provided many, but not all, of the Defendant’s books and records to the Defendant. *See id.* Thus, it was not until then that the Defendant was meaningfully able to talk to persons with some knowledge regarding the facts and circumstances surrounding the Notes and to review its books and records to determine that the NAV Error had occurred and that the Plaintiff paying for the resulting damages was compensation by the Plaintiff for its own error, as opposed to a loan from the Plaintiff to the Defendant. *Id.* at ¶¶ 21-22.

17. The Defendant also notes that the Plaintiff, on its schedules, did not schedule the Notes even though it scheduled various other promissory notes owed by its affiliates. *See* Docket No. 247 at 13 of 74. Additionally, on April 15, 2019, the Plaintiff agreed to extend the date that certain demand notes payable by the Defendant to the Plaintiff could be demanded to May 31, 2021, as the Defendant expected to be unable to pay those notes. *See* Sauter Declaration at ¶ 31. It is illogical and highly improbable that, notwithstanding that admission and acknowledgement, the Plaintiff would nevertheless loan the Defendant \$7.4 million some two weeks later. Rather, as the evidence suggests, Waterhouse made a mistake in not realizing that the funds being paid by the Plaintiff to the Defendant were in compensation for the NAV Error and not a loan.

IV. DISCUSSION

18. Attached hereto as Exhibit “B” is the Defendant’s proposed Amended Answer, incorporating new defenses or affirmative defenses resulting from the knowledge of the facts above.

19. Federal Rule of Civil Procedure 15, as made applicable to this Adversary Proceeding by Federal Rule of Bankruptcy Procedure 7015, provides for leave to amend a pleading, which leave “[t]he court should freely give [] when justice so requires.” FED. R. CIV. P. 15(a)(2).

20. The Court must “possess a ‘substantial reason’ to deny a request for leave to amend.” *Smith v. EMC Corp.*, 393 F.3d 590, 595 (5th Cir. 2004). The Fifth Circuit has outlined five “consideration” guiding the Rule 15 inquiry: “1) undue delay, 2) bad faith or dilatory motive, 3) repeated failure to cure deficiencies by previous amendments, 4) undue prejudice to the opposing party, and 5) futility of the amendment.” *Id.*

21. No Undue Delay. There has been no undue delay. The Defendant filed its Answer only some seventy (80) days ago. This Adversary Proceeding has been pending for four (4) months. The Defendant has not filed a prior motion for leave to amend. And, most importantly, as evidenced by the Sauter Declaration, the Defendant had no way of knowing of these defenses and affirmative defenses until the termination of the Shared Services Agreement and the ability of the Defendant to communicate with former employees of the Plaintiff who, prior to that time, were under instructions to not discuss matters of a potential litigation nature with the Defendant under penalty of termination, and to have access to its books and records. Thus, it was not until April, 2021, that the Defendant was even able to learn of these defenses to the Notes or the facts and circumstances surrounding the Notes.

22. No Bad Faith or Dilatory Motive. There is no bad faith or dilatory motive for the same reasons as above; the Defendant only recently learned of its defenses, the Defendant moved for leave promptly after learning of them; and leave to amend is not sought to avoid summary judgment or continue trial.

23. No Repeated Failures to Cure By Prior Amendments. This is the Defendant's first motion to amend.

24. No Undue Prejudice. There is no undue prejudice to the Plaintiff. Discovery is ongoing and depositions have not been scheduled. The Defendant is agreeable to further extending discovery. The Plaintiff will have every reasonable opportunity to test the new defenses, and all underlying witness and documents related to the same are available.

25. No Futility of the Amendment. The Defendant's defense is not futile:

- (i) it is supported by *prima facie* evidence by the Sauter Declaration;
- (ii) the amount of the Notes, one for \$5 million and one for \$2.4 million, is almost identical to the ultimate \$5,186,496 payment by the Defendant on February 15, 2019 and the \$2,398,842 May 21, 2019 payment by the Defendant;
- (iii) the fact that the Plaintiff did not schedule the Notes, while scheduling many others, is evidence that the Plaintiff itself did not consider the Notes legitimate (or know of their existence);
- (iv) the fact that Waterhouse signed the Notes, and not in a representative capacity for the Defendant, whereas all other notes are prepared by the Plaintiff's legal department and signed by other agents in representative capacities, is evidence that Waterhouse made a mistake or did not understand what was going on, and had no authority or clearance to bind the Defendant to the Notes, and that, perhaps, the

Notes were done for some draft, or accounting, or temporary purpose with no intention or expectation, even on the part of Waterhouse, that the Notes ever be legitimate.

26. The Defendant is not suggesting that the merits of its defenses be tried through this Motion; only that its defenses and the Motion are not “futile.”

27. Accordingly, as no substantial reason exists to deny the amendment, the Court should “freely” grant leave to the Defendant to amend its Answer.

V. PRAYER

WHEREFORE, PREMISES CONSIDERED, the Defendant respectfully requests that the Court enter an order: (i) granting this Motion; (ii) granting the Defendant leave to file the Amended Answer attached hereto as Exhibit “B”; and (iii) granting the Defendant such other and further relief to which it may be justly entitled.

RESPECTFULLY SUBMITTED this 22d day of May, 2021.

MUNSCH HARDT KOPF & HARR, P.C.

By: /s/ Davor Rukavina

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**COUNSEL FOR HIGHLAND CAPITAL
MANAGEMENT FUND ADVISORS, L.P.**

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that he discussed the relief requested herein with Jeff Pomerantz, Esq. and John Morris, Esq., on March 21, 2021, but that, as of the filing hereof, he has not heard back regarding whether the Plaintiff opposes said relief.

/s/ Davor Rukavina

Davor Rukavina

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this the 22d day of May, 2021, true and correct copies of this document and the exhibits hereto were electronically served by the Court's ECF system on parties entitled to notice thereof, including on the Plaintiff through its counsel of record.

/s/ Davor Rukavina

Davor Rukavina

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re	§	
	§	
HIGHLAND CAPITAL MANAGEMENT,	§	Chapter 11
L.P.,	§	
	§	Case No. 19-34054-sgj11
Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT,	§	
L.P.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Adv. No. 21-03004
	§	
HIGHLAND CAPITAL MANAGEMENT	§	
FUND ADVISORS, L.P.	§	
	§	
Defendant.	§	

DECLARATION OF DENNIS C. SAUTER, JR.

I, Dennis C. Sauter, Jr., hereby swear under oath and penalty of perjury pursuant to the laws of the United States of America that the following is true and correct to the best of my knowledge and belief:

1. My name is Dennis C. Sauter, Jr. I am over the age of 21, have never been convicted of a felony or crime of moral turpitude, and am otherwise qualified to give this Declaration. I have personal knowledge of the facts stated in this Declaration, or such facts are known to me from my review of the books and records of Highland Capital Management Fund Advisors, L.P. ("HCMFA").

2. I am an attorney licensed to practice law in the State of Texas and have been such since 2001.

3. While I provided limited legal services to Highland Capital Management, L.P. (the “Debtor”) and its affiliated entities as outside counsel before I became in-house counsel, those services were limited to real estate transactions having nothing to do with the facts discussed in this Declaration.

4. HCMFA is a registered advisor under the Investment Advisors Act of 1940. CITE. As such, HCMFA advises various independent funds, which, in turn, are investment vehicles for a large number of investors.

5. HCMFA has always had very few employees. During 2019, for example, HCMFA had only 7 to 9 employees.

6. Instead, most of the services needed by HCMFA to transact its business were provided by the Debtor pursuant to that certain *Second Amended and Restated Shared Services Agreement* dated February 8, 2013 (the “Shared Services Agreement”), a true and correct copy of which is attached hereto as Exhibit 1.

7. This was standard business practices for the Debtor and various other affiliated companies, including other advisers within the Debtor’s and its affiliates “complex” of businesses: the Debtor would employ most of the employees and then share those employees with HCMFA and other “complex” entities in exchange for payments by HCMFA and such other entities.

8. Thus, under the Shared Services Agreement, employees of the Debtor (many of whom were highly trained and specialized) provided many of the key services to HCMFA on an as-needed basis. These services included legal, accounting, regulatory, compliance, IT, and tax services, among others. Additionally, under the Shared Services Agreement the Debtor provided critical electronic infrastructure to HCMFA and other “complex” entities, such that the books and records, and e-mail communications, of HCMFA were actually stored on the Debtor’s server.

9. These facts are very important to the issues I will discuss below.

10. On January 22, 2021, the Debtor filed its *Complaint for (i) Breach of Contract and (ii) Turnover of Property of the Debtor's Estate* (the "Complaint") against HCMFA, thereby initiating this Adversary Proceeding.

11. The Complaint concerns two promissory notes each dated May 2, 2019 (the "Notes") that the Debtor seeks a judgment against HCMFA for: (i) a note for \$5 million; and (ii) a note for \$2.4 million.

12. On March 1, 2021, HCMFA filed its *Defendant's Original Answer* (the "Answer").

13. At the time that the Debtor filed the Complaint, I promptly undertook an internal review of the background facts concerning the Notes. I had no knowledge of them since I had not been employed by HCMFA, and the few employees of HCMFA had no knowledge of the Notes. I also discussed the Notes with James Dondero, formerly the CEO of the Debtor, and Mr. Dondero could not recall the genesis of the Notes. My review of the limited books and records of HCMFA that were not in the possession of the Debtor did not reveal any background facts regarding the Notes or the existence of the Notes.

14. Normally, I would have discussed the Notes with employees of the Debtor who also provided services to HCMFA pursuant to the Shared Services Agreement in order to assess what defenses or affirmative defenses to the Complaint existed. However, in this instance I was precluded from doing so.

15. First, attached hereto as Exhibit 2 is a true and correct copy of an e-mail exchange between me and Mr. James Seery dated September 17, 2020. Mr. Seery was and remains the Chief Executive Officer of the Debtor. As stated in Exhibit 2, Mr. Seery was informing me that Debtor employees had been instructed not to discuss with me anything that is "inimical" to the interests of the Debtor, and that they would be terminated if they did so. This e-mail communication comports with other communications between myself and Mr. Seery and/or Debtor's counsel,

where I was cautioned not to discuss with Debtor employees matters that may be adverse to the Debtor.

16. Second, by the time of the filing of the Complaint, the Court had entered a preliminary injunction against Mr. Dondero, a true and correct copy of which is attached hereto as Exhibit 3. That injunction prohibited Mr. Dondero from “directly or indirectly . . . communicating with any of the Debtor’s employees, except as it specifically relates to shared services currently provided.” As the information concerning the Notes was background information and not related to “services currently provided,” I was concerned that, if I discussed the Notes with the Debtor’s employees, the Debtor would argue that either Mr. Dondero or I violated the Court’s injunction.

17. In sum, after the Complaint was filed, no one at HCMFA knew anything about the Notes, and I was precluded from contacting the people that would have known something about the notes, *i.e.* the Debtor’s employees, to discuss what they may have known. I also had very limited access to HCMFA books and records and, even if I had had full access, I would not have known what relevant books and records to search for in the many millions of files without first obtaining a generalized background of the facts regarding the Notes from Debtor employees.

18. I then worked with outside counsel at Munsch Hardt Kopf & Harr, P.C. to review the Complaint and prepare and file the Answer. That original Answer did not contain any affirmative defenses because, as explained above, no one at HCMFA knew of any facts that might give rise to an affirmative defense.

19. The situation changed by mid-April, 2021. As of late February, 2021, the Debtor terminated the Shared Services Agreement and terminated most of its former employees. Many of those employees then formed their own company, Skyview Group, which then contracted with HCMFA (and others) to continue providing essentially the same services that they had previously provided under the Shared Services Agreement. Additionally, the Debtor provided access to

HCMFA of much of its books and records (although not all). Thus, as of March, 2021, I was able to communicate with most former Debtor employees and to access the books and records of HCMFA without fear of violating any court order.

20. March, 2021, was exceedingly busy, to say the least. With the termination of the Shared Services Agreement, HCMFA, other entities that I am general counsel to, and I were preoccupied with transitioning the services that the Debtor had been providing for more than a decade to a new entity, using new infrastructure, new offices, new networks, etc., all for the primary goal of ensuring a smooth and uninterrupted continuity of business and services provided by HCMFA and others to third parties.

21. By mid-April, 2021, the situation had calmed down to the point that I was able to discuss the Notes with former employees, most importantly Frank Waterhouse (“Waterhouse”) and Will Mabry (“Mabry”). Mabry in particular was able to provide me internal documents and memorandums that I had not previously known about or had access to that helped with the factual background of the Notes.

22. From these discussions and documents, I have been able to understand the factual background concerning the Notes, ultimately concluding that the Notes were signed by mistake by Waterhouse without authority from HCMFA and have no consideration and were never intended to be debt instruments of HCMFA.

23. My investigation has revealed the following.

24. One of the funds that HCMFA advises is Highland Global Allocation Fund (“GAF”). In March, 2018, GAF sold equity interests it held in TerreStar. As part of this, it was necessary to calculate the “net asset value” (“NAV”) of these securities and of GAF assets. HCMFA was responsible for advising on the NAV. In turn, pursuant to the Shared Services Agreement and in accordance with applicable compliance and operating procedures, the Debtor

was responsible to HCMFA to calculate the NAV, and the Debtor had several employees charged with these and similar calculations as part of the Debtor's routine business services and as part of what the Debtor regularly provided to HCMFA and affiliated companies.

25. The Debtor made a mistake in calculating the NAV (the "NAV Error"). The NAV Error was discovered in early 2019 as GAF was being converted from an open-ended fund to a closed-ended fund. The Securities and Exchange Commission opened an investigation, and various employees and representatives of the Debtor, HCMFA, and GAF worked with the SEC to correct the error and to compensate GAF and the various investors in GAF harmed by the NAV Error.

26. Ultimately, and working with the SEC, the Debtor determined that the losses from the NAV Error to GAF and its shareholders amounted to \$7.5 million: (i) \$6.1 million for the NAV Error itself, as well as rebating related advisor fees and processing costs; and (ii) \$1.4 million of losses to the shareholders of GAF.

27. HCMFA accepted responsibility for the NAV Error and paid out \$5,186,496 on February 15, 2019 and \$2,398,842 on May 21, 2019. I am not sure of the flow of funds, whether the funds flowed through HCMFA or were paid by the Debtor on behalf of HCMFA, and discovery will likely clear that up. Either way, however, the payments were of HCMFA funds and on behalf of HCMFA.

28. In turn, the Debtor accepted responsibility to HCMFA for having caused the NAV Error, and the Debtor ultimately, whether through insurance or its own funds, compensated HCMFA for the above payments.

29. Returning to the Notes, Waterhouse was the Chief Financial Officer of both the Debtor and HCMFA during the above events and at the time he signed the Notes.

30. It appears clear that Waterhouse made a mistake in preparing and signing the Notes. First, , the Notes correspond very closely to the ultimate \$5,186,496 and \$2,398,842 payments. Second, it appears that Waterhouse assumed, incorrectly, that the funds being paid by the Debtor were a loan to HCMFA, instead of payments as compensation and restitution to HCMFA for the Debtor having caused the NAV Error. Third, it therefore appears that Waterhouse prepared the Notes for some internal accounting or other purpose, but without there being actual consideration for the Notes and without any intention on the part of the Debtor and HCMFA that there be Notes or that there be a loan transaction.

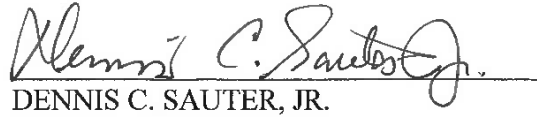
31. I also note that, as of May, 2019, HCMFA had executed other demand notes payable to the Debtor. On April 15, 2019, the Debtor executed that certain *Acknowledgement from HCMLP*, a true and correct copy of which is attached hereto as Exhibit 4. By the same, the Debtor agreed not to demand payment of these notes prior to May 31, 2021, because HCMFA believed that it would not be able to repay those notes prior to that time. It is illogical that, in light of the same, the Debtor would shortly thereafter lend an additional \$7.4 million to HCMFA. Rather, as my investigation has shown, the Debtor did not lend the funds to HCMFA but instead paid the funds, directly or indirectly, to compensate HCMFA for the NAV Error, which was the Debtor's error and therefore its obligation to correct and compensate for.

32. Therefore, in light of having learned of these facts in mid to late-April, 2019, HCMFA now believes that it has affirmative defenses to the Notes in the nature of mutual mistake, void for lack of consideration, and no proper authority of Waterhouse to sign the Notes.

33. Neither I, nor HCMFA, nor any of HCMFA's agents, have been less than diligent in investigating the Notes and the Complaint.

34. HCMFA respectfully requests that it be granted leave to assert these affirmative defenses in the Adversary Proceeding.

Signed: May 21, 2021


DENNIS C. SAUTER, JR.

**SECOND AMENDED AND RESTATED
SHARED SERVICES AGREEMENT**

THIS SECOND AMENDED AND RESTATED SHARED SERVICES AGREEMENT (this “**Agreement**”) is entered into to be effective as of 8th day of February, 2013 (the “**Effective Date**”) by and among Highland Capital Management, L.P., a Delaware limited partnership (“**HCMLP**”), and Highland Capital Management Fund Advisors, L.P., formerly known as Pyxis Capital, L.P., a Delaware limited partnership (“**HCMFA**”), and any affiliate of HCMFA that becomes a party hereto. Each of the signatories hereto is individually a “**Party**” and collectively the “**Parties**”.

RECITALS

A. During the Term, HCMLP will provide to HCMFA certain services as more fully described herein and the Parties desire to allocate the costs incurred for such services and assets among them in accordance with the terms and conditions in this Agreement.

AGREEMENT

In consideration of the foregoing recitals and the mutual covenants and conditions contained herein, the Parties agree, intending to be legally bound, as follows:

**ARTICLE I
DEFINITIONS**

“**Actual Cost**” means, with respect to any period hereunder, one hundred percent (100%) of the actual costs and expenses caused by, incurred or otherwise arising from or relating to (i) the Shared Services and (ii) the Shared Assets, in each case during such period.

“**Affiliate**” means a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a specified Person. The term “**control**” (including, with correlative meanings, the terms “**controlled by**” and “**under common control with**”) means the possession of the power to direct the management and policies of the referenced Person, whether through ownership interests, by contract or otherwise.

“**Agreement**” has the meaning set forth in the preamble.

“**Allocation Percentage**” has the meaning set forth in Section 4.01.

“**Applicable Margin**” shall mean an additional amount equal to 5% of all costs allocated by Service Provider to the other parties hereto under Article IV; provided that the parties may agree on a different margin percentage as to any item or items to the extent the above margin percentage, together with the allocated cost of such item or service, would not reflect an arm’s length value of the particular service or item allocated.

“**Change**” has the meaning set forth in Section 2.02(a).

“**Change Request**” has the meaning set forth in Section 2.02(b).

“**Code**” means the Internal Revenue Code of 1986, as amended, and the related regulations and published interpretations.

“Effective Date” has the meaning set forth in the preamble.

“Governmental Entity” means any government or any regulatory agency, bureau, board, commission, court, department, official, political subdivision, tribunal or other instrumentality of any government, whether federal, state or local, domestic or foreign.

“Liabilities” means any cost, liability, indebtedness, obligation, co-obligation, commitment, expense, claim, deficiency, guaranty or endorsement of or by any Person of any nature (whether direct or indirect, known or unknown, absolute or contingent, liquidated or unliquidated, due or to become due, accrued or unaccrued, matured or unmatured).

“Loss” means any cost, damage, disbursement, expense, liability, loss, obligation, penalty or settlement, including interest or other carrying costs, legal, accounting and other professional fees and expenses incurred in the investigation, collection, prosecution and defense of claims and amounts paid in settlement, that may be imposed on or otherwise incurred or suffered by the referenced Person; provided, however, that the term ***“Loss”*** will not be deemed to include any special, exemplary or punitive damages, except to the extent such damages are incurred as a result of third party claims.

“New Shared Service” has the meaning set forth in Section 2.03.

“Party” or ***“Parties”*** has the meaning set forth in the preamble.

“Person” means an association, a corporation, an individual, a partnership, a limited liability company, a trust or any other entity or organization, including a Governmental Entity.

“Quarterly Report” has the meaning set forth in Section 5.01.

“Recipient” means HCMFA and any of HCMFA’s direct or indirect Subsidiaries or managed funds or accounts in their capacity as a recipient of the Shared Services and/or Shared Assets.

“Service Provider” means any of HCMLP and its direct or indirect Subsidiaries in its capacity as a provider of Shared Services or Shared Assets.

“Service Standards” has the meaning set forth in Section 6.01.

“Shared Assets” shall have the meaning set forth in Section 3.02.

“Shared Services” shall have the meaning set forth in Section 2.01.

“Subsidiary” means, with respect to any Person, any Person in which such Person has a direct or indirect equity ownership interest in excess of 50%.

“Tax” or ***“Taxes”*** means: (i) all state and local sales, use, value-added, gross receipts, foreign, privilege, utility, infrastructure maintenance, property, federal excise and similar levies, duties and other similar tax-like charges lawfully levied by a duly constituted taxing authority against or upon the Shared Services and the Shared Assets; and (ii) tax-related surcharges or fees that are related to the Shared Services and the Shared Assets identified and authorized by applicable tariffs.

“Term” has the meaning set forth in Section 7.01.

ARTICLE II SHARED SERVICES

Section 2.01 Services. During the Term, Service Provider will provide Recipient with Shared Services, including without limitation, all of the (i) finance and accounting services, (ii) human resources services, (iii) marketing services, (iv) legal services, (v) corporate services, (vi) information technology services, and (vii) operations services; each as requested by HCMFA and as described more fully on Annex A attached hereto, the “*Shared Services*”), it being understood that personnel providing Shared Services may be deemed to be employees of HCMFA to the extent necessary for purposes of the Investment Advisers Act of 1940, as amended.

Section 2.02 Changes to the Shared Services.

(a) During the Term, the Parties may agree to modify the terms and conditions of a Service Provider’s performance of any Shared Service in order to reflect new procedures, processes or other methods of providing such Shared Service, including modifying the applicable fees for such Shared Service to reflect the then current fair market value of such service (a “*Change*”). The Parties will negotiate in good faith the terms upon which a Service Provider would be willing to provide such New Shared Service to Recipient.

(b) The Party requesting a Change will deliver a description of the Change requested (a “*Change Request*”) and no Party receiving a Change Request may unreasonably withhold, condition or delay its consent to the proposed Change.

(c) Notwithstanding any provision of this Agreement to the contrary, a Service Provider may make: (i) Changes to the process of performing a particular Shared Service that do not adversely affect the benefits to Recipient of Service Provider’s provision or quality of such Shared Service in any material respect or increase Recipient’s cost for such Shared Service; (ii) emergency Changes on a temporary and short-term basis; and/or (iii) Changes to a particular Shared Service in order to comply with applicable law or regulatory requirements, in each case without obtaining the prior consent of Recipient. A Service Provider will notify Recipient in writing of any such Change as follows: in the case of clauses (i) and (iii) above, prior to the implementation of such Change, and, in the case of clause (ii) above, as soon as reasonably practicable thereafter.

Section 2.03 New Shared Services. The Parties may, from time to time during the Term of this Agreement, negotiate in good faith for Shared Services not otherwise specifically listed in Section 2.01 (a “*New Shared Service*”). Any agreement between the Parties on the terms for a New Shared Service must be in accordance with the provisions of Article IV and Article V hereof, will be deemed to be an amendment to this Agreement and such New Shared Service will then be a “*Shared Service*” for all purposes of this Agreement.

Section 2.04 Subcontractors. Nothing in this Agreement will prevent Service Provider from, with the consent of Recipient, using subcontractors, hired with due care, to perform all or any part of a Shared Service hereunder. A Service Provider will remain fully responsible for the performance of its obligations under this Agreement in accordance with its terms, including any obligations it performs through subcontractors, and a Service Provider will be solely responsible for payments due to its subcontractors.

ARTICLE III SHARED ASSETS

Section 3.01 Shared IP Rights. Each Service Provider hereby grants to Recipient a non-exclusive right and license to use the intellectual property and other rights granted or licensed, directly or indirectly, to such Service Provider (the “*Shared IP Rights*”) pursuant to third party intellectual property Agreements (“*Third Party IP Agreements*”), provided that the rights granted to Recipient hereunder are subject to the terms and conditions of the applicable Third Party IP Agreement, and that such rights shall terminate, as applicable, upon the expiration or termination of the applicable Third Party IP Agreement. Recipient shall be licensed to use the Shared IP Rights only for so long as it remains an Affiliate of HCMLP. In consideration of the foregoing licenses, Recipient agrees to take such further reasonable actions as a Service Provider deems to be necessary or desirable to comply with its obligations under the Third Party IP Agreements.

Section 3.02 Other Shared Assets. Subject to Section 3.01, each Service Provider hereby grants Recipient the right, license or permission, as applicable, to use and access the benefits under the agreements, contracts and licenses that such Service Provider will purchase, acquire, become a party or beneficiary to or license on behalf of Recipient (the “*Future Shared Assets*” and collectively with the Shared IP Rights, the “*Shared Assets*”).

ARTICLE IV COST ALLOCATION

Section 4.01 Actual Cost Allocation Formula. The Actual Cost of any item relating to any Shared Services or Shared Assets shall be allocated based on the Allocation Percentage. For purposes of this Agreement, “*Allocation Percentage*” means:

- (a) To the extent 100% of such item is demonstrably attributable to HCMFA, 100% of the Actual Cost of such item shall be allocated to HCMFA as agreed by HCMFA;
- (b) To the extent a specific percentage of use of such item can be determined (e.g., 70% for HCMLP and 30% for HCMFA), that specific percentage of the Actual Cost of such item will be allocated to HCMLP or HCMFA, as applicable and as agreed by HCMFA; and
- (c) All other portions of the Actual Cost of any item that cannot be allocated pursuant to clause (a) or (b) above shall be allocated between HCMLP and HCMFA in such proportion as is agreed in good faith between the parties.

Section 4.02 Non-Cash Cost Allocation. The actual, fully burdened cost of any item relating to any Shared Services or Shared Assets that does not result in a direct, out of pocket cash expense may be allocated to HCMLP and HCMFA for financial statement purposes only, as agreed by HCMFA, without any corresponding cash reimbursement required, in accordance with generally accepted accounting principles, based on the Allocation Percentage principles described in Section 4.01 hereof.

ARTICLE V PAYMENT OF COST AND REVENUE SHARE; TAXES

Section 5.01 Quarterly Statements. Within thirty (30) days following the end of each calendar quarter during the Term (or at such time as may be otherwise agreed by the parties), each Service Provider shall furnish the other Parties hereto with a written statement with respect to the Actual Cost paid by it in respect of Shared Services and Shared Assets provided by it, in each case, during such

period, setting forth (i) the cost allocation in accordance with Article IV hereof together with the Applicable Margin on such allocated amounts, and (ii) any amounts paid pursuant to Section 5.02 hereof, together with such other data and information necessary to complete the items described in Section 5.03 hereof (hereinafter referred to as the “*Quarterly Report*”).

Section 5.02 Settlement Payments. At any time during the Term, any Party may make payment of the amounts that are allocable to such Party together with the Applicable Margin related thereto, regardless of whether an invoice pursuant to Section 5.03 hereof has been issued with respect to such amounts.

Section 5.03 Determination and Payment of Cost and Revenue Share.

(a) Within ten (10) days of the submission of the Quarterly Report described in Section 5.02 hereof (or at such other time as may be agreed by the parties), the Parties shall (i) agree on the cost share of each of the Parties and Applicable Margin as calculated pursuant to the provisions of this Agreement; and (ii) prepare and issue invoices for the cost share and Applicable Margin payments that are payable by any of the Parties.

(b) Within ten (10) days of preparation of the agreement and the issuance of the invoice described in Section 5.03(a) (or at such other time as may be agreed by the parties), the Parties shall promptly make payment of the amounts that are set forth on such cost allocation invoice. Notwithstanding anything in this Agreement to the contrary, provision of the Shared Services shall commence from the Effective Date, but no fees shall be payable from Recipient or otherwise accrue with respect to such services provided during the month of December 2011.

Section 5.04 Taxes.

(a) Recipient is responsible for and will pay all Taxes applicable to the Shared Services and the Shared Assets provided to Recipient, provided, that such payments by Recipient to Service Provider will be made in the most tax-efficient manner and provided further, that Service Provider will not be subject to any liability for Taxes applicable to the Shared Services and the Shared Assets as a result of such payment by Recipient. Service Provider will collect such Tax from Recipient in the same manner it collects such Taxes from other customers in the ordinary course of Service Provider’s business, but in no event prior to the time it invoices Recipient for the Shared Services and Shared Assets, costs for which such Taxes are levied. Recipient may provide Service Provider with a certificate evidencing its exemption from payment of or liability for such Taxes.

(b) Service Provider will reimburse Recipient for any Taxes collected from Recipient and refunded to Service Provider. In the event a Tax is assessed against Service Provider that is solely the responsibility of Recipient and Recipient desires to protest such assessment, Recipient will submit to Service Provider a statement of the issues and arguments requesting that Service Provider grant Recipient the authority to prosecute the protest in Service Provider’s name. Service Provider’s authorization will not be unreasonably withheld. Recipient will finance, manage, control and determine the strategy for such protest while keeping Service Provider reasonably informed of the proceedings. However, the authorization will be periodically reviewed by Service Provider to determine any adverse impact on Service Provider, and Service Provider will have the right to reasonably withdraw such authority at any time. Upon notice by Service Provider that it is so withdrawing such authority, Recipient will expeditiously terminate all proceedings. Any adverse consequences suffered by Recipient as a result of the withdrawal will be submitted to arbitration pursuant to Section 9.14. Any contest for Taxes brought by Recipient may not result in any lien attaching to any property or rights of Service Provider or otherwise jeopardize Service Provider’s interests or rights in any of its property. Recipient agrees to

indemnify Service Provider for all Losses that Service Provider incurs as a result of any such contest by Recipient.

(c) The provisions of this Section 5.04 will govern the treatment of all Taxes arising as a result of or in connection with this Agreement notwithstanding any other Article of this Agreement to the contrary.

ARTICLE VI SERVICE PROVIDER RESPONSIBILITIES

Section 6.01 Service Provider General Obligations. Service Provider will provide the Shared Services and the Shared Assets to Recipient on a non-discriminatory basis and will provide the Shared Services and the Shared Assets in the same manner as if it were providing such services and assets on its own account (the “*Service Standards*”). Service Provider will conduct its duties hereunder in a lawful manner in compliance with applicable laws, statutes, rules and regulations and in accordance with the Service Standards, including, for avoidance of doubt, laws and regulations relating to privacy of customer information.

Section 6.02 Books and Records; Access to Information. Service Provider will keep and maintain books and records on behalf of Recipient in accordance with past practices and internal control procedures. Recipient will have the right, at any time and from time to time upon reasonable prior notice to Service Provider, to inspect and copy (at its expense) during normal business hours at the offices of Service Provider the books and records relating to the Shared Services and Shared Assets, with respect to Service Provider’s performance of its obligations hereunder. This inspection right will include the ability of Recipient’s financial auditors to review such books and records in the ordinary course of performing standard financial auditing services for Recipient (but subject to Service Provider imposing reasonable access restrictions to Service Provider’s and its Affiliates’ proprietary information and such financial auditors executing appropriate confidentiality agreements reasonably acceptable to Service Provider). Service Provider will promptly respond to any reasonable requests for information or access. For the avoidance of doubt, all books and records kept and maintained by Service Provider on behalf of Recipient shall be the property of Recipient, and Service Provider will surrender promptly to Recipient any of such books or records upon Recipient’s request (provided that Service Provider may retain a copy of such books or records) and shall make all such books and records available for inspection and use by the Securities and Exchange Commission or any person retained by Recipient at all reasonable times. Such records shall be maintained by Service Provider for the periods and in the places required by laws and regulations applicable to Recipient.

Section 6.03 Return of Property and Equipment. Upon expiration or termination of this Agreement, Service Provider will be obligated to return to Recipient, as soon as is reasonably practicable, any equipment or other property or materials of Recipient that is in Service Provider’s control or possession.

ARTICLE VII TERM AND TERMINATION

Section 7.01 Term. The term of this Agreement will commence as of the Effective Date and will continue in full force and effect until the first anniversary of the Effective Date (the “*Term*”), unless terminated earlier in accordance with Section 9.02. The Term shall automatically renew for successive one year periods unless sooner terminated under Section 7.02.

Section 7.02 Termination. Either Party may terminate this Agreement, with or without cause, upon at least 60 days advance written notice at any time prior to the expiration of the Term.

ARTICLE VIII LIMITED WARRANTY

Section 8.01 Limited Warranty. Service Provider will perform the Shared Services hereunder in accordance with the Service Standards. Except as specifically provided in this Agreement, Service Provider makes no express or implied representations, warranties or guarantees relating to its performance of the Shared Services and the granting of the Shared Assets under this Agreement, including any warranty of merchantability, fitness, quality, non-infringement of third party rights, suitability or adequacy of the Shared Services and the Shared Assets for any purpose or use or purpose. Service Provider will (to the extent possible and subject to Service Provider's contractual obligations) pass through the benefits of any express warranties received from third parties relating to any Shared Service and Shared Asset, and will (at Recipient's expense) assist Recipient with any warranty claims related thereto.

ARTICLE IX MISCELLANEOUS

Section 9.01 No Partnership or Joint Venture; Independent Contractor. Nothing contained in this Agreement will constitute or be construed to be or create a partnership or joint venture between or among HCMLP or HCMFA or their respective successors or assigns. The Parties understand and agree that, with the exception of the procurement by Service Provider of licenses or other rights on behalf of Recipient pursuant to Section 3.01, this Agreement does not make any of them an agent or legal representative of the other for any purpose whatsoever. With the exception of the procurement by Service Provider of licenses or other rights on behalf of Recipient pursuant to Section 3.01, no Party is granted, by this Agreement or otherwise, any right or authority to assume or create any obligation or responsibilities, express or implied, on behalf of or in the name of any other Party, or to bind any other Party in any manner whatsoever. The Parties expressly acknowledge that Service Provider is an independent contractor with respect to Recipient in all respects, including with respect to the provision of the Shared Services.

Section 9.02 Amendments; Waivers. Except as expressly provided herein, this Agreement may be amended only by agreement in writing of all Parties. No waiver of any provision nor consent to any exception to the terms of this Agreement or any agreement contemplated hereby will be effective unless in writing and signed by all of the Parties affected and then only to the specific purpose, extent and instance so provided. No failure on the part of any Party to exercise or delay in exercising any right hereunder will be deemed a waiver thereof, nor will any single or partial exercise preclude any further or other exercise of such or any other right.

Section 9.03 Schedules and Exhibits; Integration. Each Schedule and Exhibit delivered pursuant to the terms of this Agreement must be in writing and will constitute a part of this Agreement, although schedules need not be attached to each copy of this Agreement. This Agreement, together with such Schedules and Exhibits constitutes the entire agreement among the Parties pertaining to the subject matter hereof and supersedes all prior agreements and understandings of the Parties in connection therewith.

Section 9.04 Further Assurances. Each Party will take such actions as any other Party may reasonably request or as may be necessary or appropriate to consummate or implement the transactions contemplated by this Agreement or to evidence such events or matters.

Section 9.05 Governing Law. This Agreement and the legal relations between the Parties will be governed by and construed in accordance with the laws of the State of Texas applicable to contracts made and performed in such State and without regard to conflicts of law doctrines unless certain matters are preempted by federal law.

Section 9.06 Assignment. Except as otherwise provided hereunder, neither this Agreement nor any rights or obligations hereunder are assignable by one Party without the express prior written consent of the other Parties.

Section 9.07 Headings. The descriptive headings of the Articles, Sections and subsections of this Agreement are for convenience only and do not constitute a part of this Agreement.

Section 9.08 Counterparts. This Agreement and any amendment hereto or any other agreement delivered pursuant hereto may be executed in one or more counterparts and by different Parties in separate counterparts. All counterparts will constitute one and the same agreement and will become effective when one or more counterparts have been signed by each Party and delivered to the other Parties.

Section 9.09 Successors and Assigns; No Third Party Beneficiaries. This Agreement is binding upon and will inure to the benefit of each Party and its successors or assigns, and nothing in this Agreement, express or implied, is intended to confer upon any other Person or Governmental Entity any rights or remedies of any nature whatsoever under or by reason of this Agreement.

Section 9.10 Notices. All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement will be in writing and will be deemed to have been given: (i) immediately when personally delivered; (ii) when received by first class mail, return receipt requested; (iii) one day after being sent for overnight delivery by Federal Express or other overnight delivery service; or (iv) when receipt is acknowledged, either electronically or otherwise, if sent by facsimile, telecopy or other electronic transmission device. Notices, demands and communications to the other Parties will, unless another address is specified by such Parties in writing, be sent to the addresses indicated below:

If to HCMLP, addressed to:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: General Counsel
Fax: (972) 628-4147

If to HCMFA, addressed to:

Highland Capital Management Fund Advisors, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: General Counsel
Fax: (972) 628-4147

Section 9.11 Expenses. Except as otherwise provided herein, the Parties will each pay their own expenses incident to the negotiation, preparation and performance of this Agreement, including the fees, expenses and disbursements of their respective investment bankers, accountants and counsel.

Section 9.12 Waiver. No failure on the part of any Party to exercise or delay in exercising any right hereunder will be deemed a waiver thereof, nor will any single or partial exercise preclude any further or other exercise of such or any other right.

Section 9.13 Severability. If any provision of this Agreement is held to be unenforceable for any reason, it will be adjusted rather than voided, if possible, to achieve the intent of the Parties. All other provisions of this Agreement will be deemed valid and enforceable to the extent possible.

Section 9.14 Arbitration; Jurisdiction. Notwithstanding anything contained in this Agreement or the Annexes hereto to the contrary, in the event there is an unresolved legal dispute between the parties and/or any of their respective officers, directors, partners, employees, agents, affiliates or other representatives that involves legal rights or remedies arising from this Agreement, the parties agree to submit their dispute to binding arbitration under the authority of the Federal Arbitration Act; provided, however, that either party or such applicable affiliate thereof may pursue a temporary restraining order and/or preliminary injunctive relief in connection with confidentiality covenants or agreements binding on the other party, with related expedited discovery for the parties, in a court of law, and, thereafter, require arbitration of all issues of final relief. The Arbitration will be conducted by the American Arbitration Association, or another, mutually agreeable arbitration service. The arbitrator(s) shall be duly licensed to practice law in the State of Texas. The discovery process shall be limited to the following: Each side shall be permitted no more than (i) two party depositions of six hours each. Each deposition is to be taken pursuant to the Texas Rules of Civil Procedure; (ii) one non-party deposition of six hours; (iii) twenty-five interrogatories; (iv) twenty-five requests for admission; (v) ten requests for production. In response, the producing party shall not be obligated to produce in excess of 5,000 total pages of documents. The total pages of documents shall include electronic documents; (vi) one request for disclosure pursuant to the Texas Rules of Civil Procedure. Any discovery not specifically provided for in this paragraph, whether to parties or non-parties, shall not be permitted. The arbitrator(s) shall be required to state in a written opinion all facts and conclusions of law relied upon to support any decision rendered. No arbitrator will have authority to render a decision that contains an outcome determinative error of state or federal law, or to fashion a cause of action or remedy not otherwise provided for under applicable state or federal law. Any dispute over whether the arbitrator(s) has failed to comply with the foregoing will be resolved by summary judgment in a court of law. In all other respects, the arbitration process will be conducted in accordance with the American Arbitration Association's dispute resolution rules or other mutually agreeable, arbitration service rules. The party initiating arbitration shall pay all arbitration costs and arbitrator's fees, subject to a final arbitration award on who should bear costs and fees. All proceedings shall be conducted in Dallas, Texas, or another mutually agreeable site. Each party shall bear its own attorneys fees, costs and expenses, including any costs of experts, witnesses and/or travel, subject to a final arbitration award on who should bear costs and fees. The duty to arbitrate described above shall survive the termination of this Agreement. Except as otherwise provided above, the parties hereby waive trial in a court of law or by jury. All other rights, remedies, statutes of limitation and defenses applicable to claims asserted in a court of law will apply in the arbitration.

Section 9.15 General Rules of Construction. For all purposes of this Agreement and the Exhibits and Schedules delivered pursuant to this Agreement: (i) the terms defined in Article I have the meanings assigned to them in Article I and include the plural as well as the singular; (ii) all accounting terms not otherwise defined herein have the meanings assigned under GAAP; (iii) all references in this Agreement to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of the body of this Agreement; (iv) pronouns of either gender or neuter will include, as appropriate, the other pronoun forms; (v) the words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision; (vi) "or" is not exclusive; (vii) "including" and "includes" will be deemed to be followed by "but not limited to" and "but is not limited to, "respectively; (viii) any definition of or

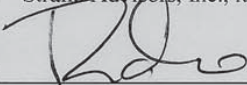
reference to any law, agreement, instrument or other document herein will be construed as referring to such law, agreement, instrument or other document as from time to time amended, supplemented or otherwise modified; and (ix) any definition of or reference to any statute will be construed as referring also to any rules and regulations promulgated thereunder.

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IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed by its duly authorized officers as of the day and year first above written.


HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its general partner

By: 
Name: James Dondero
Title: President

**HIGHLAND CAPITAL MANAGEMENT FUND
ADVISORS, L.P.**

By: Strand Advisors XVI, Inc., its general partner

By: 
Name: Brian Mitts
Title: Assistant Secretary

Annex A

Shared Services

Compliance

General compliance
Compliance systems

Facilities

Equipment
General Overhead
Office Supplies
Rent & Parking

Finance & Accounting

Book keeping
Cash management
Cash forecasting
Credit facility reporting
Financial reporting
Accounts payable
Accounts receivable
Expense reimbursement
Vendor management

HR

Drinks/snacks
Lunches
Recruiting

IT

General support & maintenance (OMS, development, support)
Telecom (cell, phones, broadband)
WSO

Legal

Corporate secretarial services
Document review and preparation
Litigation support
Management of outside counsel

Marketing and PR

Public relations

Tax

Tax audit support
Tax planning
Tax prep and filing

Investments

Investment research on an ad hoc basis as requested by HCMFA

Valuation Committee

Trading

Trading desk services

Operations

Trade settlement

Rukavina, Davor

From: James Seery <jpseeryjr@gmail.com>
Sent: Thursday, September 17, 2020 4:17 PM
To: DC Sauter
Cc: Gregory V. Demo
Subject: Re: Acis Settlement

DC

I believe your concerns regarding the release are misplaced as it does not bind entities that HCMLP does not control. Greg can walk you through the language, but I do not believe it requires adjustment nor does it create any liability. To the contrary, it reduces liability.

With regard to the HCMLP employee prohibitions, no employee whether legal or non-legal can work on any matter that is inimical to the interests of HCMLP. I, as CEO, and the Independent Board will make the determination as to whether an action violates the prohibition, and a breach of the prohibition will lead to termination for cause. I believe that most of the employees have been informed of this requirement and are following the directive.

With regard to transactional matters, HCMLP employees will continue to work with you on those issues that do not run afoul of the prohibition above. If there is a particular matter where you are taking a potentially adversarial action vis a vis HCMLP, please let me know what it is. We can then consider whether a customized operating protocol for that issue is needed or whether you will simply be on your own. I will make the determination with the advice of counsel. We do not believe the Texas rules of professional responsibility apply in this situation.

Please let me know what matter you are considering with respect to the immediately preceding paragraph, and we will consider how to best address your concerns.

Best. Jim

Jim Seery
631-804-2049
jpseeryjr@gmail.com

From: DC Sauter <DSauter@NexPointadvisors.com>
Date: Thursday, September 17, 2020 at 4:56 PM
To: Jim Seery <jpseeryjr@gmail.com>
Cc: Greg Demo <GDemo@pszjlaw.com>
Subject: RE: Acis Settlement

Jim/Greg, follow up on my email below. I have a few items that have been placed on my plate, and I really need to understand who I can speak with and the extent to which they are permitted to share information with me.

D.C. SAUTER

NEXPOINT

O: 972.628.4117 | C: 469.877.6440

From: DC Sauter

Sent: Tuesday, September 15, 2020 8:55 AM

To: 'James Seery' <jpseeryjr@gmail.com>

Cc: Gregory V. Demo <GDemo@pszjlaw.com>

Subject: RE: Acis Settlement

My apologies for copying Isaac. I was under the mistaken impression that he would have assisted in the settlement.

In my view, the requested clarification is beneficial to Strand, HCMLP, and the other "HCMLP Entities." The documents purport to release ACIS from claims on behalf of, among others, any entity that is "managed" by HCMLP and "respective current advisors, trustees, directors, officers, managers, members, partners, current or former employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns" of any "HCMLP Entity." Those "HCMLP Entities" lack the authority to bind a whole host of parties in that laundry list, which could result in claims against HCMLP, Strand, and the other "HCMLP Entities" by both the "ACIS Released Parties," who will claim they didn't receive the benefit of the bargain, and the parties on whose behalf the "HCMLP Parties" purported to release claims who didn't consent to the release.

Additionally, I'd like to visit with you all regarding the board's position that prohibits certain HCMLP personnel from working on certain matters.

First, I am unclear whether the prohibition applies to only HCMLP legal personnel or whether it applies to all HCMLP employees. Please clarify.

Second, as you may know, virtually all of these matters are falling into my lap, and in most cases I lack any knowledge about them. It would help me tremendously if current HCMLP employees, and particularly the legal personnel, could provide me with transactional background to assist in the transition of the matter. While I understand the board's concern with Judge Jernigan's order, I don't believe that the Texas Disciplinary Rules of Professional Conduct mandate or even permit an attorney licensed in the State of Texas to refuse to cooperate with a former client in the transfer of a matter to a new attorney. Rule 1.15(d) states that "[u]pon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payments of fee that has not been earned." The comments to that rule provide additional clarity: "In every instance of withdrawal and even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client." T.D.R.P.C. Rule 1.15, comment 9. Proper steps may include providing information to new counsel or even continuing to represent the client for a limited time to meet impending deadlines. *Microsoft Corp. v. Commonwealth Sci. & Indus. Research Org.*, 2007 U.S. Dist. LEXIS 91550 *23-24 fn. 11 (E.D. Tex. Dec. 13, 2007). Even if the board insists that the HCMLP legal personnel cannot continue to represent others in non-HCMLP matters or matters adverse to HCMLP (irrespective of any conflict of interest analysis of whether those attorneys may continue to represent HCMLP in those matters), the ethical rules require that the attorneys provide assistance in transferring those matters to me or others.

Finally, I routinely handle, and am routinely asked to handle, legal matters that relate to real estate for entities owned or controlled by HCMLP (Park West, the Arizona assets, the Maple Ave. property, to name a few). I am not an HCMLP employee, and it's my understanding that NexPoint Advisors, L.P. is not compensated for the time I spend on HCMLP matters. I'm not suggesting that this arrangement should change, but it feels from my perspective that the board's position is only working in one direction. In other words, if I understand the board's position correctly, I can work on both NexPoint and HCMLP matters, but the HCMLP legal employees may only work on HCMLP-related matters. It has also put a significant amount of additional work on my plate. I would like to understand two things. First, what is the scope of my authority in these matters, and what is the proper protocol vis-à-vis you, DSI, and the board? I have tried to take the conservative approach in keeping you all informed and asking for consent or approval where I thought it

appropriate. I assume this is how you'd like to continue to handle things, but I would like confirmation of that. Second, I have heard that you all were working to transfer a couple of the legal personnel (perhaps Thedford and Post) to HCMFA so they could assist with the work load (particularly in the areas where I don't have a significant amount of experience). I'd like to know where that stands and when relief can be expected.

I'm available most of today and tomorrow to discuss.

D.C. SAUTER

NEXPOINT

O: 972.628.4117 | C: 469.877.6440

From: James Seery <jseeryjr@gmail.com>

Sent: Tuesday, September 15, 2020 7:01 AM

To: DC Sauter <DSauter@NexPointadvisors.com>

Cc: Gregory V. Demo <GDemo@pszjlaw.com>; Isaac Leventon <ILeventon@HighlandCapital.com>

Subject: Re: Acis Settlement

DC. We will discuss and revert to you. Neither Isaac nor anyone else at HCMLP is permitted to work on any issues related to the settlement and release other than as directed by me.

Thanks

Sent from my iPad

On Sep 14, 2020, at 7:08 PM, DC Sauter <DSauter@nexpointadvisors.com> wrote:

Greg,

I've been asked to review the attached release on behalf of HCMFA and the closed-end funds. I'm concerned that the language below creates an ambiguity as to whether the closed-end funds and HCMFA have released claims against the ACIS parties:

1. The release by Strand, which also serves as the general partner of HCMFA; and
2. The release by each "HCMLP Entity" of its "respective current advisors, trustees, directors, officers, managers, members, partners, current or former employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns."

We would like the final sentence in paragraph 1.a. of the Release to be revised to specifically identify HCMFA and the closed-end funds as parties not covered by the release. Please let me know if you'd like to discuss in more detail.

D.C. SAUTER | GENERAL COUNSEL, REAL ESTATE

<image001.jpg>

300 Crescent Court | Suite 700 | Dallas, Texas 75201

O: 972.628.4117 | C: 469.877.6440 | F: 972.628.4147

dsauter@nexpointadvisors.com | www.NexPointGroup.com

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<Acis - Release (EXECUTION VERSION).pdf>



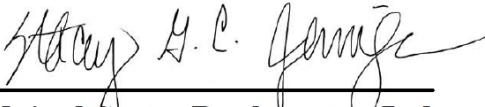
CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed January 11, 2021


United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,¹

Debtor.

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

vs.

JAMES D. DONDERO,

Defendant.

§ Chapter 11
§
§ Case No. 19-34054-sgj11
§
§
§ Adversary Proceeding No.
§
§ No. 20-03190-sgj
§
§
§
§

**ORDER GRANTING DEBTOR'S MOTION FOR A PRELIMINARY INJUNCTION
AGAINST JAMES DONDERO**

This matter having come before the Court on *Plaintiff Highland Capital Management,*

¹ The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

L.P.’s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero [Adv. Pro. Docket No. 2] (the “Motion”), filed by Highland Capital Management, L.P., the debtor and debtor-in-possession (the “Debtor”) in the above-captioned chapter 11 case (the “Bankruptcy Case”), and the plaintiff in the above-captioned adversary proceeding (the “Adversary Proceeding”); and this Court having considered (a) the Motion, (b) *Plaintiff Highland Capital Management, L.P.’s Verified Original Complaint for Injunctive Relief* [Adv. Pro. Docket No. 1] (the “Complaint”), (c) the arguments and law cited in the *Debtor’s Amended Memorandum of Law in Support of its Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero* [Adv. Pro. Docket No. 3] (the “Memorandum of Law,” and together with the Motion and Complaint, the “Debtor’s Papers”), (d) *James Dondero’s Response in Opposition to Debtor’s Motion for a Preliminary Injunction* [Adv. Pro. Docket No. 52] (the “Opposition”) filed by James Dondero, (e) the testimonial and documentary evidence admitted into evidence during the hearing held on January 8, 2021 (the “Hearing”), including assessing the credibility of Mr. James Dondero, (f) the arguments made during the Hearing, and (g) all prior proceedings relating to the Motion, including the December 10, 2020 hearing on the *Debtor’s Motion for a Temporary Restraining Order and Preliminary Injunction against James Dondero* [Adv. Pro. Docket No. 6] (the “TRO Hearing”); and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that injunctive relief is warranted under sections 105(a) and 362(a) of the Bankruptcy Code and that the relief requested in the Motion is in the best interests of the Debtor’s estate, its creditors, and other parties-in-interest;

and this Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Debtor's Papers, and the evidence submitted in support thereof, establish good cause for the relief granted herein, and that (1) such relief is necessary to avoid immediate and irreparable harm to the Debtor's estate and reorganization process; (2) the Debtor is likely to succeed on the merits of its underlying claim for injunctive relief; (3) the balance of the equities tip in the Debtor's favor; and (4) such relief serves the public interest; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor and for the reasons set forth in the record on this Motion, it is **HEREBY ORDERED THAT:**

1. The Motion is **GRANTED** as set forth herein.
2. James Dondero is preliminarily enjoined and restrained from (a) communicating (whether orally, in writing, or otherwise), directly or indirectly, with any Board member unless Mr. Dondero's counsel and counsel for the Debtor are included in any such communication; (b) making any express or implied threats of any nature against the Debtor or any of its directors, officers, employees, professionals, or agents, in whatever capacity they are acting; (c) communicating with any of the Debtor's employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero; (d) interfering with or otherwise impeding, directly or indirectly, the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned, controlled or managed by the Debtor, and the pursuit of the Plan or any

alternative to the Plan; and (e) otherwise violating section 362(a) of the Bankruptcy Code (collectively, the “Prohibited Conduct”).²

3. James Dondero is further preliminarily enjoined and restrained from causing, encouraging, or conspiring with (a) any entity owned or controlled by him, and/or (b) any person or entity acting with him or on his behalf, to, directly or indirectly, engage in any Prohibited Conduct.

4. James Dondero is further preliminarily enjoined and restrained from communicating (in person, telephonically, by e-mail, text message or otherwise) with Scott Ellington and/or Isaac Leventon, unless otherwise ordered by the Court.

5. James Dondero is further preliminarily enjoined and restrained from physically entering, or virtually entering through the Debtor’s computer, email, or information systems, the Debtor’s offices located at Crescent Court in Dallas, Texas, or any other offices or facilities owned or leased by the Debtor, regardless of any agreements, subleases, or otherwise, held by the Debtor’s affiliates or entities owned or controlled by Mr. Dondero, without the prior written permission of Debtor’s counsel made to Mr. Dondero’s counsel. If Mr. Dondero enters the Debtor’s office or other facilities or systems without such permission, such entrance will constitute trespass.

6. James Dondero is ordered to attend all future hearings in this Bankruptcy Case by Webex (or whatever other video platform is utilized by the Court), unless otherwise ordered by the Court.

7. This Order shall remain in effect until the date that any plan of reorganization or liquidation resolving the Debtor’s case becomes effective, unless otherwise ordered by the Court.

² For the avoidance of doubt, this Order does not enjoin or restrain Mr. Dondero from (1) seeking judicial relief upon proper notice or from objecting to any motion filed in this Bankruptcy Case, or (2) communicating with the committee of unsecured creditors (the “UCC”) and its professionals regarding a pot plan.

8. All objections to the Motion are overruled in their entirety.
9. The Court shall retain exclusive jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order.

END OF ORDER

Acknowledgement from HCMLP

April 15, 2019

Reference is hereby made to certain outstanding amounts loaned from HIGHLAND CAPITAL MANAGEMENT, L.P. ("HCMLP") to HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P. ("HCMF") for funding of HCMF's ongoing operations, which are payable on demand and remained outstanding on December 31, 2018 and as of the date hereof.

HCMF expects that it may be unable to repay such amounts should they become due, for the period commencing today and continuing through May 31, 2021.

HCMLP hereby agrees to not demand payment on amounts owed by HCMF prior to May 31, 2021.

Highland Capital Management, L.P.

By: Strand Advisors, Inc., its general partner

By:  _____

Acknowledged By:

Highland Capital Management Fund Advisors, L.P.

By: Strand XVI, Inc., its general partner


By:  _____

EXHIBIT 4

Davor Rukavina, Esq.
 Texas Bar No. 24030781
 Julian P. Vasek, Esq.
 Texas Bar No. 24070790
 MUNSCH HARDT KOPF & HARR, P.C.
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 Dallas, Texas 75202-2790
 Telephone: (214) 855-7500
 Facsimile: (214) 978-4375

COUNSEL FOR HIGHLAND CAPITAL
 MANAGEMENT FUND ADVISORS, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE NORTHERN DISTRICT OF TEXAS
 DALLAS DIVISION

In re	§	
	§	
HIGHLAND CAPITAL MANAGEMENT,	§	Chapter 11
L.P.,	§	
	§	Case No. 19-34054-sgj11
Debtor.	§	
<hr/>		
HIGHLAND CAPITAL MANAGEMENT,	§	
L.P.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Adv. No. 21-03004
	§	
HIGHLAND CAPITAL MANAGEMENT	§	
FUND ADVISORS, L.P.	§	
	§	
Defendant.	§	

DEFENDANT'S AMENDED ANSWER

COMES NOW Highland Capital Management Fund Advisors, L.P. (the "Defendant"), the defendant in the above-styled and numbered adversary proceeding (the "Adversary Proceeding") filed by Highland Capital Management, L.P. (the "Plaintiff"), and files this its *Defendant's Amended Answer* (the "Answer"), responding to the *Complaint for (I) Breach of Contract and (II) Turnover of Property of the Debtor's Estate* (the "Complaint"). Where an allegation in the Complaint is not expressly admitted in this Answer, it is denied.

PRELIMINARY STATEMENT

1. The first sentence of ¶ 1 sets forth the Plaintiff's objective in bringing the Complaint and does not require a response. To the extent it contains factual allegations, they are denied. The second sentence contains a legal conclusion that does not require a response. To the extent it contains factual allegations, they are denied.

2. Paragraph 2 contains a summary of the relief the Plaintiff seeks and does not require a response. To the extent it contains factual allegations, they are denied.

JURISDICTION AND VENUE

3. The Defendant admits that this Adversary Proceeding relates to the Plaintiff's bankruptcy case but denies any implication that this fact confers Constitutional authority on the Bankruptcy Case to adjudicate this dispute. Any allegations in ¶ 3 not expressly admitted are denied.

4. The Defendant admits that the Court has statutory (but not Constitutional) jurisdiction to hear this Adversary Proceeding. Any allegations in ¶ 4 not expressly admitted are denied.

5. The Defendant denies that a breach of contract claim is core. The Defendant denies that a § 542(b) turnover proceeding is the appropriate mechanism to collect a contested debt. The Defendant admits that a § 542(b) turnover proceeding is statutorily core but denies that it is Constitutionally core under *Stern v. Marshall*. The Defendant does not consent to the Bankruptcy Court entering final orders or judgment in this Adversary Proceeding. Any allegations in ¶ 5 not expressly admitted are denied.

6. The Defendant admits ¶ 6 of the Complaint.

THE PARTIES

7. The Defendant admits ¶ 7 of the Complaint.

8. The Defendant admits ¶ 8 of the Complaint.

CASE BACKGROUND

9. The Defendant admits ¶ 9 of the Complaint.

10. The Defendant admits ¶ 10 of the Complaint.

11. The Defendant admits ¶ 11 of the Complaint.

12. The Defendant admits ¶ 12 of the Complaint.

STATEMENT OF FACTS

A. The HCMFA Notes

13. The Defendant admits that it has executed at least one promissory note under which the Debtor is the payee. Any allegations in ¶ 13 not expressly admitted are denied.

14. The Defendant denies ¶ 14 of the Complaint.

15. The Defendant denies ¶ 15 of the Complaint.

16. The Defendant denies ¶ 16 of the Complaint. The document speaks for itself and the quote set forth in ¶ 16 is not verbatim.

17. The Defendant denies ¶ 17 of the Complaint. The document speaks for itself and the quote set forth in ¶ 17 is not verbatim.

18. The Defendant admits ¶ 18 of the Complaint.

B. HCMFA's Default under Each Note

19. The Defendant admits that Exhibit 3 to the Complaint (the "Demand Letter") is a true and correct copy of what it purports to be and that the document speaks for itself. To the extent ¶ 19 of the Complaint asserts a legal conclusion, no response is required, and it is denied. To the extent not expressly admitted, ¶ 19 of the Complaint is denied.

20. To the extent ¶ 20 of the Complaint asserts a legal conclusion, no response is necessary, and it is denied. The Defendant otherwise admits ¶ 20 of the Complaint.

21. The Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 21 of the Complaint and therefore denies the same.

22. The Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 22 of the Complaint and therefore denies the same.

23. The Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 23 of the Complaint and therefore denies the same.

24. The Defendant denies ¶ 24 of the Complaint.

FIRST CLAIM FOR RELIEF
(For Breach of Contract)

25. Paragraph 25 of the Complaint is a sentence of incorporation that does not require a response. All prior denials are incorporated herein by reference.

26. Paragraph 26 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant denies the allegations in ¶ 26 of the Complaint.

27. Paragraph 27 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant denies the allegations in ¶ 27 of the Complaint.

28. Paragraph 28 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant denies the allegations in ¶ 28 of the Complaint.

29. The Defendant denies ¶ 29 of the Complaint.

SECOND CLAIM FOR RELIEF
(Turnover by HCMFA Pursuant to 11 U.S.C. § 542(b))

30. Paragraph 30 of the Complaint is a sentence of incorporation that does not require a response. All prior denials are incorporated herein by reference.

31. Paragraph 31 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant denies the allegations in ¶ 31 of the Complaint.

32. Paragraph 32 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant denies the allegations in ¶ 32 of the Complaint.

33. The Defendant denies ¶ 33 of the Complaint.

34. Paragraph 34 of the Complaint states a legal conclusion that does not require a response. The Defendant admits that the Plaintiff transmitted the Demand Letter. To the extent ¶ 34 alleges other facts, the Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 34 of the Complaint and therefore denies the same.

35. The Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in ¶ 35 of the Complaint and therefore denies the same.

36. Paragraph 36 of the Complaint states a legal conclusion that does not require a response. To the extent it alleges facts, the Defendant denies the allegations in ¶ 36 of the Complaint.

37. The Defendant denies that the Plaintiff is entitled to the relief requested in the prayer, including parts (i), (ii), and (iii).

AFFIRMATIVE DEFENSES

38. At all material times to the Complaint, the Defendant, a registered advisor, advised various third-party funds as to their investments. One such fund was Highland Global Allocation Fund (“HGAF”).

39. At all material times to the Complaint, the Defendant contracted with the Plaintiff whereby the Plaintiff, through its employees, would provide certain services to the Defendant, including with respect to the Defendant's advice to the third-party funds. These services so provided included accounting, legal, regulatory, valuation, and compliance services.

40. In March, 2018, HGAF sold equity interests it held in TerreStar. As part of this, it was necessary to calculate the "net asset value" ("NAV") of these securities and of HGAF assets. The Defendant was responsible for advising on the NAV. In turn, pursuant to the Shared Services Agreement in effect at that time between the Plaintiff and the Defendant, the Plaintiff was responsible to the Defendant to calculate the NAV, and the Plaintiff had several employees charged with these and similar calculations as part of the Plaintiff's routine business services and as part of what the Plaintiff regularly provided to the Defendant and affiliated companies.

41. The Plaintiff made a mistake in calculating the NAV (the "NAV Error"). The NAV Error was discovered in early 2019 as HGAF was being converted from an open-ended fund to a closed-ended fund. The Securities and Exchange Commission opened an investigation, and various employees and representatives of the Plaintiff, the Defendant, and HGAF worked with the SEC to correct the error and to compensate HGAF and the various investors in HGAF harmed by the NAV Error. Ultimately, and working with the SEC, the Plaintiff determined that the losses from the NAV Error to HGAF and its shareholders amounted to \$7.5 million: (i) \$6.1 million for the NAV Error itself, as well as rebating related advisor fees and processing costs; and (ii) \$1.4 million of losses to the shareholders of HGAF.

42. The Defendant accepted responsibility for the NAV Error and paid out \$5,186,496 on February 15, 2019 and \$2,398,842 on May 21, 2019. In turn, the Plaintiff accepted responsibility to the Defendant for having caused the NAV Error, and the Plaintiff ultimately, whether through insurance or its own funds, compensated the Defendant for the above payments

by paying, or causing to be paid, approximately \$7.5 million to the Defendant directly or indirectly to HGAF and its investors.

43. At this time, Frank Waterhouse (“Waterhouse”) was the Chief Financial Officer to both the Plaintiff and the Defendant. Waterhouse signed the two promissory notes the subject of the Complaint (the “Notes”). He did not sign the Notes in any representative capacity for the Defendant. The Defendant did not authorize Waterhouse to sign the Notes or to bind the Defendant in any way to the Note.

44. Waterhouse made a mistake in preparing and signing the Notes for the Defendant. Upon information and belief, Waterhouse was not aware that payments from the Plaintiff to the Defendant were to compensate the Defendant for the NAV Error and resulting damages, instead assuming that the Notes were like prior notes between the Plaintiff and the Defendant. Waterhouse failed to properly inquire into the underlying transaction and, either for unknown accounting or other purposes, Waterhouse prepared and signed the Notes on his own, without proper knowledge of the underlying facts and without actual authority from either the Plaintiff or the Defendant.

45. In sum, neither the Plaintiff nor the Defendant intended that any funds paid by the Plaintiff to the Defendant be treated as debt but that they instead be treated as compensation by the Plaintiff to the Defendant for the NAV Error that the Plaintiff caused. The Notes are an unauthorized mistake and a nullity, and are void for a lack of consideration.

46. To the extent Waterhouse had apparent authority to bind the Defendant to the Notes, such apparently authority does not apply to the Notes because Waterhouse’s lack of actual authority is imputed to the Plaintiff, as Waterhouse was the CFO for the Plaintiff.

47. Accordingly, the Notes are void or unenforceable for lack of consideration, for mutual mistake, and for the lack of authority from the Defendant to Waterhouse to execute the same for the Defendant.

JURY DEMAND

48. The Defendant demands a trial by jury of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure and Rule 9015 of the Federal Rules of Bankruptcy Procedure.

49. The Defendant does not consent to the Bankruptcy Court conducting a jury trial and therefore demands a jury trial in the District Court.

PRAYER

WHEREFORE, PREMISES CONSIDERED, the Defendant respectfully request that, following a trial on the merits, the Court enter a judgment that the Plaintiff take noting on the Complaint and provide the Defendant such other relief to which it is entitled.

RESPECTFULLY SUBMITTED this _____ day of May, 2021.

MUNSCH HARDT KOPF & HARR, P.C.

By: /s/ Davor Rukavina _____

Davor Rukavina, Esq.
Texas Bar No. 24030781
Julian P. Vasek, Esq.
Texas Bar No. 24070790
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Dallas, Texas 75202-2790
Telephone: (214) 855-7500
Facsimile: (214) 978-4375
drukavina@munsch.com
jvasek@munsch.com

**COUNSEL FOR HIGHLAND CAPITAL
MANAGEMENT FUND ADVISORS,
L.P.**

EXHIBIT 216

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JURY DEMAND

48. The Defendant demands a trial by jury of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure and Rule 9015 of the Federal Rules of Bankruptcy Procedure.

49. The Defendant does not consent to the Bankruptcy Court conducting a jury trial and therefore demands a jury trial in the District Court.

PRAYER

WHEREFORE, PREMISES CONSIDERED, the Defendant respectfully request that, following a trial on the merits, the Court enter a judgment that the Plaintiff take noting on the Complaint and provide the Defendant such other relief to which it is entitled.

RESPECTFULLY SUBMITTED this 6th day of July, 2021.

MUNSCH HARDT KOPF & HARR, P.C.

By: /s/ Davor Rukavina

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jvasek@munsch.com

**COUNSEL FOR HIGHLAND CAPITAL
MANAGEMENT FUND ADVISORS,
L.P.**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this the 6th day of July, 2021, true and correct copies of this document were electronically served by the Court's ECF system on parties entitled to notice thereof, including on counsel for the plaintiff.

By: /s/ Davor Rukavina

Davor Rukavina, Esq.

EXHIBIT 217

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re	§	
	§	
HIGHLAND CAPITAL MANAGEMENT,	§	Chapter 11
L.P.,	§	
	§	Case No. 19-34054-sgj11
Debtor.	§	
<hr/>		
HIGHLAND CAPITAL MANAGEMENT,	§	
L.P.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Adv. No. 21-03004
	§	
HIGHLAND CAPITAL MANAGEMENT	§	
FUND ADVISORS, L.P.	§	
	§	
Defendant.	§	

**DEFENDANT'S SECOND MOTION FOR LEAVE TO AMEND ANSWER
AND BRIEF IN SUPPORT THEREOF**

Davor Rukavina, Esq.
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Julian P. Vasek, Esq.
Texas Bar No. 24070790
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COUNSEL FOR HIGHLAND CAPITAL
MANAGEMENT FUND ADVISORS, L.P.



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**DEFENDANT’S SECOND MOTION FOR LEAVE TO AMEND ANSWER
AND BRIEF IN SUPPORT THEREOF**

TO THE HONORABLE STACEY G.C. JERNIGAN, U.S. BANKRUPTCY JUDGE:

COMES NOW Highland Capital Management Fund Advisors, L.P. (“HCMFA” or the “Defendant”), the defendant in the above styled and numbered adversary proceeding (the “Adversary Proceeding”) commenced by Highland Capital Management, L.P. (the “Debtor”), and files this its *Defendant’s Second Motion for Leave to Amend Answer and Brief In Support Thereof* (the “Motion”), respectfully stating as follows:

I. SUMMARY¹

1. By this Motion, HCMFA requests leave to amend its answer to expressly deny that the Notes were signed. HCMFA does not concede that this relief is required, as it has already denied that it signed the notes—Mr. Waterhouse purportedly signed them as maker. However, the Uniform Commercial Code (“U.C.C.”) appears to require a more express denial of signature.²

2. This is not an ordinary note case. The way that the Notes were signed, the fact that they did not go through “legal,” the absence of evidence that anyone involved was told that the underlying transfers were loans—accounting personnel *assumed* the transfers to be loans— and the fact that the Debtor was liable to HCMFA for causing a valuation error that led to \$7.4 million in liabilities, which was the purpose of the transfers; *i.e.* compensation, all demonstrates that the Notes are a mistake created by Debtor employees in good faith based on their assumptions, and not the facts. Indeed, it is now apparent that Mr. Waterhouse did not sign the Notes or authorize his electronic signature.

¹ This Motion is supported by the *Defendant’s Appendix in Support of Second Motion for Leave to Amend Answer*, filed concurrently herewith, and cited to herein as HCMFA APP.

² See TEX. BUS. & COMM. CODE ANN. 3.308(a).

3. This case is an example of how one mistake and assumption snowballs and leads to another, which leads to another, and which leads to yet another, with a plaintiff now seeking to exploit these mistakes—its own mistakes, by the way—rather than looking at the actual facts:

- Step 1. Mr. Dondero went to Mr. Waterhouse and told Mr. Waterhouse to transfer \$7.4 million to HCMFA. Mr. Dondero never told Mr. Waterhouse that this was a loan; just to transfer the funds. In fact, the transfers were compensation from the Debtor to HCMFA because the Debtor, through its negligence, created a \$7.4 million liability of HCMFA to third parties. Mr. Dondero never told Mr. Waterhouse that the transfers were loans.
- Step 2. Mr. Waterhouse did not have the authority to enter into a loan of this size either for HCMFA or the Debtor. He simply told his controller to transfer the funds and put the matter out of his head.
- Step 3. That controller, pursuant to a multi-year course of conduct and many other inter-company promissory notes, asked a subordinate to paper the transfers as loans, assuming that they must be loans because intercompany transfers are usually booked as such and the auditors need paper notes.
- Step 4. The subordinate, who is not a lawyer, took a Word document form, years old, and populated it, instead of going through the legal department. And, instead of asking Mr. Waterhouse to sign the notes, she affixed a .jpg image of his signature to the Notes, without authority from him.
- Step 5. Now that there are notes in the system, and even though none of them know anything about it, accountants and auditors do what they do: they record and report the Notes, thereby breathing life into something that should never have been.
- Step 6. Complicating matters, there were prior promissory notes from HCMFA to the Debtor in the amounts of \$6.3 million—similar to \$7.4 million—such that persons subsequently reviewing books and records would naturally have assumed that HCMFA's books, which carried the Notes, were referring to these old notes and not something new, such that the mistake was not caught until after this litigation commenced.

II. TIMING

4. NexPoint will first address timing issues, since the Debtor is certain, as it always does, to allege that NexPoint somehow delayed in asserting a right, conveniently ignoring that it had NexPoint's documents, that it had secured an injunction preventing Mr. Dondero from talking

to Debtor employees, and that it had instructed its key employees not to communicate with HCMFA regarding this litigation. HCMFA APP 3-6. The following dates are key:

- (i) April, 2021. Mr. Sauter interviews Mr. Waterhouse, who basically informs him that, as he did not use electronic signatures in May, 2019, if a note has his signature, then he must have signed it. *Id.* 7 (¶ 23). HCMFA at that time has no reason to question this. *See id.*
- (ii) May 28, 2021. HCMFA serves a request for production on the Debtor, which includes “[a]ll Microsoft Word copies of the Notes, including Metada.” *Id.* 819.
- (iii) The Debtor does not produce the same. *Id.* 815 (¶ 5). As late as October 19, 2021, as HCMFA is deposing Mr. Waterhouse—the person who purportedly signed the Notes—the Debtor is still refusing to produce the original Word documents of the Notes.³
- (iv) October 19, 2021. The Debtor and HCMFA depose Mr. Waterhouse, who testifies that he does not remember signing the Notes and, if he authorized someone to affix his electronic signature to the Notes (even though he was not sure this was being done in May, 2019), then there would be an e-mail from him to an administrative assistant so authorizing. *See Discussion, infra*, at pp. 12-16.
- (v) October 25, 2021. The Debtor finally produces the original of the Notes. HCMFA APP 815 (¶ 5). This confirms that the signature of Mr. Waterhouse is not even an electronic signature, but rather a .jpg image of his signature affixed to the Word version (not even the .pdf version) of the Notes. *See Discussion, infra*, at pp. 20-21.
- (vi) October 27, 2021. HCMFA deposes Mr. Klos and Ms. Hendrix and learns that Ms. Hendrix affixed Mr. Waterhouse’s signature to the Notes, apparently assuming that this was authorized, but without actual authority to do so. No document authorizing Ms. Hendrix to do so has been produced. *See Discussion, infra*, at pp. 19-23. *See* HCMFA APP 815 (¶ 6).

5. Through no fault of HCMFA, it was not until the completion of these depositions that HCMFA learned that Mr. Waterhouse did not sign the Notes and that he did not authorize his

³ “John, I also asked you for the Word versions of these notes so we could look at the properties, and you have not provided them. Are you intending to?”

MR. MORRIS: No.”

HCMFA APP 198 (146:12-17).

electronic signature to the Notes. In that respect, discovery worked as it should, and HCMFA should now have the ability to amend its Answer accordingly.

III. BACKGROUND FACTS

A. THE NOTES, THE ADVERSARY PROCEEDING, AND HCMFA'S DEFENSE

6. On January 22, 2021, the Plaintiff filed its *Complaint for (i) Breach of Contract and (ii) Turnover of Property of the Debtor's Estate* (the "Complaint"), thereby initiating this Adversary Proceeding. By the Complaint, the Debtor seeks to recover on two demand promissory notes allegedly issued by HCMFA (the "Notes") and signed by Frank Waterhouse ("Waterhouse"): (i) a note dated May 2, 2019 in the amount of \$2.4 million; and (ii) a note dated May 3, 2019 in the amount of \$5 million.

7. Each of the Notes, in its body, defines "maker" as HCMFA. On the signature pages, however, the Notes say:

MAKER:



FRANK WATERHOUSE

8. Mr. Waterhouse does not sign the Notes in any representative capacity, such as "Treasurer" or "Chief Financial Officer." (Dkt. No. 1 at exh. 1 & 2).

9. On May 22, 2021, HCMFA filed its *Defendant's Motion for Leave to Amend Answer* (Dkt. No. 32), and on July 2, 2021, the Court entered its *Order Granting Defendant's Motion to Amend* (Dkt. No. 45). Accordingly, on July 6, 2021, HCMFA filed its *Defendant's Amended Answer* (Dkt. No. 48), asserting various affirmative defenses, including that Waterhouse did not have authority to execute the Notes on behalf of HCMFA and that, therefore, HCMFA did not sign the Notes. (Dkt. No. 48 at pp. 5-7).

10. The purpose of this prior amendment was to assert that the Notes were executed by mistake, which is also relevant to the present Motion. Pursuant to a Shared Services Agreement, HCMFA contracted with the Debtor, for pay, for the Debtor to provide various valuation services to HCMFA as it advises various funds. HCMFA APP 13-25. The Debtor made a mistake relating to a valuation issue for one of those funds, Highland Global Allocation Fund, and specifically the valuation of TerreStar. *Id.* 325-330 (273:10-278:13). This mistake led to liability at HCMFA of \$7.4 million. *See id.* It is HCMFA's position that this was the Debtor's liability under the Shared Services Agreement, as the Debtor breached the standard of care and its duties as specified in the agreement. *See, e.g., id.* 18 (§ 6.01). Soon thereafter, as HCMFA needed money (both to pay the remaining portion of that liability and to pay a \$5 million consent fee to the investors of a fund), Highland transferred these sums (\$7.4 million) to HCMFA. *Id.* 334-35 (282:24-283:5). This was done at the direction of Mr. Dondero, who believed that it was proper for Highland to transfer these funds to compensate HCMFA for Highland's valuation error, and not as a loan from the Debtor to HCMFA.⁴ HCMFA APP 334-35 (282:12-283:7).

11. As detailed below, that is when the errors and assumptions began: The Debtor's (and HCMFA's) Chief Financial Officer, Frank Waterhouse ("Waterhouse"), perhaps assumed that, when Mr. Dondero told him to transfer the funds, it was a loan, even though Mr. Dondero never told him that it was a loan; the Debtor's controller, David Klos ("Klos"), when told to transfer the funds by Mr. Waterhouse, assumed that this was a loan and assumed that promissory notes should be prepared; and Kristin Hendrix ("Hendrix"), Mr. Klos' subordinate, prepared the Notes as instructed by Mr. Klos, and purported to electronically sign Mr. Waterhouse's name to

⁴ This is further evidenced because the source of the funds that the Debtor used to pay HCMFA came from funds paid into the Debtor by Mr. Dondero. Clearly Mr. Dondero knew what was going on, and clearly he intended the subsequent transfer to be compensation. Otherwise he could have just transferred funds to HCMFA directly.

the Notes. All of these individuals, in the accounting group and not the legal group, simply assumed that funds flowing from the Debtor to HCMFA must be loans, and therefore that the loans must be “papered up” for accounting and audit purposes, as had been done many, many times in the prior fifteen years.

12. The Debtor will point out instances where HCMFA carried the Notes as liabilities on its books and records. There is evidence of that, but there is also evidence otherwise. That is not conclusive, however, or even necessarily persuasive to the jury—of course the same accounting personnel who *assumed* that the transfers were loans would then carry the resulting (mistaken) Notes on the books and records.

B. WATERHOUSE’S DEPOSITION AND ADMISSION OF MISTAKE

13. As noted, Mr. Waterhouse signed the Notes as “maker.” Certainly, his signature does not indicate any representative capacity such as “treasurer” or as “CFO.” In the body of the Notes, “Maker” is defined as HCMFA. Thus, there is ambiguity and, more importantly, *prima facie* liability for Mr. Waterhouse.

14. Here, the Texas U.C.C. contemplates this potential and directly applies, providing as follows:

(1) If the form of the signature shows unambiguously that the signature is made on behalf of the represented person who is identified in the instrument, the representative is not liable on the instrument.

(2) Subject to Subsection (c), the representative is liable on the instrument to a holder in due course that took the instrument without notice that the representative was not intended to be liable on the instrument if (i) the form of the signature does not show unambiguously that the signature is made in a representative capacity, or (ii) the represented person is not identified in the instrument. With respect to any other person, the representative is liable on the instrument unless the representative proves that the original parties did not intend the representative to be liable on the instrument.

TEX. BUS. & COMM. CODE ANN. § 3.402(b). The comments to the U.C.C. explain with an analogous situation:

Case # 3. The name “Richard Roe” is written on the note and immediately below that name Doe signs “John Doe” without indicating that Doe signed as agent.

In each case Doe is liable on the instrument to a holder in due course without notice that Doe was not intended to be liable. In none of the cases does Doe’s signature unambiguously show that Doe was signing as agent for an identified principal. A holder in due course should be able to resolve any ambiguity against Doe.

But the situation is different if a holder in due course is not involved. In each case Roe is liable on the note. Subsection (a). If the original parties to the note did not intend that Doe also be liable, imposing liability on Doe is a windfall to the person enforcing the note. Under subsection (b)(2) Doe is prima facie liable because his signature appears on the note and the form of the signature does not unambiguously refute personal liability. But Doe can escape liability by proving that the original parties did not intend that he be liable on the note. This is a change from former Section 3-403(2)(a).

U.C.C. cmt. 3.

15. Mr. Waterhouse was asked at length about his potential personal liability on the

Notes:

Q. Okay. But back then when you signed this, did it ever cross your mind that you were the maker on these notes?

A. No.

Q. Back then when you signed this document, did it ever cross your mind that you could be a co-obligor on these notes?

A. No. I didn’t receive \$7.4 million, I mean...

* * *

Q. So putting all other issues aside, if the law -- if the law says that you were liable for those notes because of how you signed them, then would you agree with me that these notes are a mistake?

MR. MORRIS: Objection to the form of the question.

MS. DANDENEAU: Objection to the form.

A. Yes.

HCMFA APP 357-59 (305:16-307:4).

16. Given that the law makes Mr. Waterhouse *prima facie* liable for the Notes, even though that was not his intention, the Notes are a mistake and Mr. Waterhouse admitted that they are a mistake. More to the point however, Mr. Waterhouse testified extensively regarding whether he signed (or did not sign) the Notes. This is important because, when HCMFA first interviewed Mr. Waterhouse regarding the Notes (once he was no longer prohibited by the Debtor from communicating with HCMFA regarding litigation matters), Mr. Waterhouse stated that, if the Notes bear his signatures, then he must have signed them as he did not use an electronic signature in May, 2019. HCMFA APP 7 (¶ 23). In other words, even though HCMFA had reason to believe that the Notes were a mistake, it had no reason at that time to believe that Mr. Waterhouse did not actually sign the Notes.

17. This changed when HCMFA deposed Mr. Waterhouse on October 19, 2021. The deposition began with Mr. Waterhouse repeatedly testifying that he did not recall signing the Notes, even though the signatures were his. “I don’t recall specifically signing this, but this is my signature.” HCMFA APP 193 (141:4-7). In other words, as he had told HCMFA in April, 2021, given that the signature is his, he must have signed the Notes. As detailed below, however, once Mr. Waterhouse reviewed the Notes and confirmed that they contain his electronic signatures, it became clear that he did not sign the Notes and, equally as importantly, that he did not authorize his electronic signature to the Notes.

18. First, Mr. Waterhouse confirmed some background facts. He confirmed that he, as the CFO for the Debtor and an officer of HCMFA, would not have had the authority on his own to cause the Debtor to lend, or HCMFA to borrow, \$7.4 million [subject to objection]. Only Mr.

Dondero would have had that authority [subject to objection]. HCMFA APP 322-25 (270:18-273:9). Mr. Waterhouse admitted that, as a result of the TerreStar valuation error, shareholders in funds advised by HCMFA had damages of between \$7 and \$8 million. *Id.* 329-30 (277:7-278:13). Mr. Waterhouse confirmed that Mr. Dondero told him to transfer funds from the Debtor to HCMFA:

I testified earlier, that I had a conversation with Mr. Dondero for -- for these amounts attributable to -- it was either the error -- you know, the error, and in that conversation he said, go get the money from Highland.

Id. 334-35 (282:24-283:5).

19. Critically, Mr. Waterhouse could not remember if Mr. Dondero told him this was a loan. *Id.* 336 (284:4-6). Mr. Waterhouse did not remember if Mr. Dondero told him to have promissory notes prepared. *Id.* 336 (284:18-20). Regarding the genesis of the Notes, Mr. Waterhouse testified:

Q. Okay. And would you have signed two promissory notes obligating HCMFA to pay Highland \$7.4 million without Mr. Dondero's prior knowledge and approval?

MS. DEITSCH-PEREZ: Object to the form.

A. You know, from -- from what I recall around these notes, you know, I don't recall specifically Mr. -- Mr. Dondero saying to -- to make this a loan. So my conversation with Mr. Dondero around the culmination of the NAV error as related to TerreStar which was a -- a -- I think it was a year and a half process. I don't know, it was a multi-month process, very laborious, very difficult. When we got to the end, I had a conversation with Mr. Dondero on where to, you know, basically get the funds to reimburse the fund, and I recall him saying, get the money from Highland.

Q. And so he told you to get the money from Highland; is that right?

A. That is what I recall -- in my conversation with him, that is -- that is what I can recall.

HCMFA APP 196-97 (144:14-145:22). Asked if he would disagree with Mr. Dondero that Mr. Dondero never told him to make the transfers loans, Mr. Waterhouse testified [subject to objection]: “all I recall is he said, get the money from Highland.” *Id.* 370 (318:3-10). Continuing:

And you don’t remember discussing with Mr. Dondero what the terms of those two promissory notes should be?

A. I don’t recall -- I testified all I recall is he said, get the money from Highland. I don’t -- the -- the terms of the note, I don’t recall ever having a discussion around the terms of the note, but since I don’t draft the notes, that -- there could have been a conversation with other people later.

Id. 371 (319:7-16).

20. When asked whether it was possible that, “when Mr. Dondero told you to transfer the funds from Highland, you just assumed on your own that those would be loans without him actually telling you that those would be loans,” Mr. Waterhouse testified [subject to objection] that “I don’t know.” HCMFA APP 339 (287:4-13). Asked again whether, seeing \$7.4 million being transferred out of the Debtor, whether it is possible that he assumed this to be a loan, Mr. Waterhouse answered [subject to objection]:

I don’t know. As I testified earlier, I had conversations with Mr. Dondero about - about the -- the -- the moneys that were needed for the NAV error. And I recall him saying go get it from Highland -- or get it from Highland.

Id. 340-41 (288:19-289:8). In fact, Mr. Waterhouse confirmed that it was on his “initiative” to have the Notes drafted [subject to objection]. *Id.* 342 (290:4-16). And, Mr. Waterhouse believed that the legal team would be involved with drafting the notes. *Id.* 342 (290:15-16).

21. Mr. Waterhouse did not recall if the Notes were presented to him on paper form to sign. *Id.* 344-45 (292:14-293:17). Mr. Waterhouse testified:

I signed very few documents via email. I can’t say that it never happened, but people either stopped by my office and physically walked in documents for signature that we discussed face-to-face.

Id. 345-46 (293:25-294:5). And, before signing documents, Mr. Waterhouse would usually have the legal department or the compliance department sign off on the document. *Id.* 346-348 (294:16-296:7). When asked again if he remembered signing the Notes, Mr. Waterhouse testified [subject to objection]:

They would -- they would have been presented physically on paper most likely or someone would have left it. But, I mean, again, I don't -- I don't recall."

Id. 348 (296:8-18). And, Mr. Waterhouse confirmed that, back then, he used an "ink pen" to sign documents, as he told HCMFA in April, 2019. *Id.* 348 (296:19-25).

22. When presented with the Notes and asked whether he believed that he ink-signed them, Mr. Waterhouse answered:

These -- these -- these signatures are identical, now that I stare at them, and I mean, they are so close -- I mean, they're identical that, I mean, even with my chicken scratch signature, I don't know if I can -- you know, I do this 100 times, could I do that as -- as precisely as I see between the two notes.

Id. 350 (298:2-17). Pressed further regarding whether he "actually signed either or both notes":

Is -- I don't -- I don't recall specifically. As I said before, my assistant did have a -- an electronic signature, and that was used from time to time. It wasn't as common practice back in 2019. It definitely was more common practice when we had to work from home and remotely for COVID because it that made it almost impossible to, right, provide wet signatures since we're all working from home remotely.

Q. Well, going just for these two promissory notes, Mr. Waterhouse, in light of your inability to remember any details, are you sure you actually signed either or both of those notes?

MS. DANDENEAU: Objection to form.

A. I don't recall specifically signing -- actually physically signing these notes. As I said before, I don't recall doing that. This -- this looks like my signature, but yet these two signatures are identical.

Q. So you don't recall physically signing them, and I take it you don't recall electronically signing them either?

A. I don't recall. You know, Highland has all my emails. If that occurred, you know, you know, I don't have any of these records is what I'm saying. I don't have any of those records.

Id. 350-52 (298:300:4).

23. Regarding the possibility that Mr. Waterhouse electronically signed the Notes, as rare as that may have been in May, 2019, Mr. Waterhouse testified as follows:

And help me here. I'm not very technologically astute. When you -- and I -- I recognize that you do it rarely, but when you sign a document electronically, do you believe that there is an electronic record of you having authorized or signed a document electronically?

MR. MORRIS: Objection to the form of the question.

I -- I don't know the tech answer to that, but, you know, since I don't have -- I don't ever attach my signature block electronically, my assistant would have done that, and if that is done over email like we did several times -- you know, multiple, multiple times over COVID, she would attach my signature block and then email it out to whatever party.

Q. What was your assistant's name in May 2019?

A. It was Naomi Chisum.

Q. Is she the only one? I'm sorry, was she your only assistant that would have maybe facilitated logistically something like you just described?

A. You know, she was out on maternity leave at some point. I don't -- I don't recall those dates where she was out for maternity leave. There was -- there were folks backing her up. I don't recall specifically who those -- who those, you know, administrative assistants were, and I don't recall specifically if she was out during this time on maternity leave.

Id. 372-73 (320:11-321:20).

24. Aside from providing valuable testimony regarding the genesis of the Notes, for purposes of the present Motion Mr. Waterhouse testified: (i) that he does not remember signing the Notes in person or electronically; (ii) he rarely signed documents in May, 2019 electronically; (iii) he would have expected that documents he signed were approved by the legal department; (iv) the Notes strongly appear to be signed electronically; and (v) if signed electronically, he would

have sent an e-mail authorizing the same. Interestingly, he also testified that it would have been his “assistant” to sign his name electronically; not Ms. Hendrix, a mid-level manager and not an “administrative” assistant.

25. No such e-mail authorizing Mr. Waterhouse’s electronic signature has been produced by the Debtor. HCMFA APP 815 (¶ 6).

C. MR. KLOS’ DEPOSITION AND CREATION OF THE NOTES

26. HCMFA deposed Mr. Klos on October 27, 2021. In May, 2021, Mr. Klos was the controller for the Debtor. HCMFA APP 661 (8:11-13). It is Mr. Klos who directed Ms. Hendrix to prepare the Notes. *Id.* 721 (68:4-13). Mr. Klos discussed how funds would be transferred from one affiliated entity to another as needed for liquidity:

And you joined Highland in 2009. From that point in time, 2009, through 2019, was there any practice at the enterprise of those businesses to transfer funds between each other on a basis of when one needed it and one had it?

A. Yes, that was a fairly, generally speaking, that was a fairly common practice, of using different entities within the overall structure to bridge liquidity.

Id. 682-83 (29:24-30:7). Klos also testified as to the standard practice that, where the Debtor was transferring funds out, the transfer would be booked as a loan:

So over the general -- talking about generally now, over those 10 years when there were these intercompany transfers for liquidity purposes, how were they booked by the debtor, by Highland Capital Management?

MR. MORRIS: Objection to the form of the question.

THE WITNESS: Help me on the direction. So this is money that Highland is receiving or money that Highland is sending?

Q. (BY MR. RUKAVINA) Sending out.

A. Sending out. So this is -- in the scenario that you’re describing, this money that Highland is sending out to meet some other corporate obligor’s liquidity needs?

Q. Yes, sir.

A. So those would be booked as a loan. I would -- I need to hedge a little bit because I'm not a hundred percent certain, but I would say if not exclusively via loans close to exclusively.

Q. And would they -- strike that. Would they usually be papered up with a promissory note?

A. Yes.

Q. Now, why was that the general course during 10 years? Was there a policy and procedure in place, or would Dondero say book it as a loan, or was that just the right thing to do from an accounting perspective?

MR. MORRIS: Objection to the form of the question.

THE WITNESS: At the end of the day it's at the direction of Jim Dondero, so I can't tell you exactly why he wanted it to be done that way. But that was certainly the practice of how it was done in those situations.

Id. 685-87 (32:20-34:5).

27. Thus Mr. Klos believed that the underlying transfers were loans, in part because he believed that Mr. Waterhouse would have told him that (but could not recall for certain), and in part because of past practice. *Id.* 722-23 (69:1-70:14). Mr. Klos described the usual course at the Debtor with respect to papering intercompany loans:

Q. (BY MR. RUKAVINA) So going back to this Exhibit 3, sir, why did you ask Kristin, can you or Hayley please prep a note for execution? Why them? Remember, I was asking about what the course or procedure was at that point in time.

A. Yeah, so nomenclature, procedure, process. I would say the informal process for these types of loans, they were frequent in nature, would be for someone on the corporate accounting team to prepare a note and have it executed.

Q. Okay. That was the standard course back then?

A. Again, I don't know what standard course means. That was fairly typical.

Q. Why would you not have asked someone in the Highland legal department to prepare a note?

A. Because this was a legally reviewed document as far as the form of the agreement. It's a one-page, two-paragraph form that had been used for a long time.

So the only thing that would change with respect to these notes would be the date, the amount, likely the rate. I can't think of anything else offhand that would have changed from note to note.

Q. After you asked Ms. Hendrix to prepare this note, did you have any further role with respect to the papering, preparation, or execution of that note?

A. Not that I can remember.

Q. Would you have had any role in having either or both of the notes actually signed electronically or by ink by Mr. Waterhouse?

A. Likely not, no.

Id. 736-37 (83:19-84-24).

28. The point is simple: when professional accountants at the Debtor saw funds flowing from the Debtor to an affiliate, such as HCMFA, they *assumed* that the funds were a loan and papered it as such, as this is how it had been done for many years on many occasions.

D. MS. HENDRIX'S DEPOSITION AND LACK OF AUTHORITY TO SIGN THE NOTES

29. HCMFA deposed Ms. Hendrix on October 27, 2021. In May, 2019, Ms. Hendrix was the senior accounting manager at the Debtor. HCMFA APP 461 (12:4-16). At that time, she reported to Mr. Klos, who reported to Mr. Waterhouse. *Id.* 461-62 (12:25-13:9). While Ms. Hendrix never drafted a promissory note from scratch, in May, 2019, part of her job was taking a form note and revising it. *Id.* 466 (17:5-11). At that time, it was the corporate accounting group at the Debtor, not the legal group, that was responsible for updating draft promissory notes so as to create new ones. *Id.* 466 (17:20-25). As Ms. Hendrix testified:

Our typical practice is if we have a loan with certain affiliates that it's a demand note. We have a template that we have used for years that was created by either our internal legal team or an outside law firm, I'm not sure which. The typical practice is always updating a few things on that template, getting it executed, and filing it in our audit folders.

Id. 467 (18:18-25). The corporate accounting group, not the legal group, did this “updating.” *Id.* 468-69 (19:1-13; 20:1-5). And Ms. Hendrix confirmed the general purpose of the intercompany notes:

Typically anytime specifically Jim Dondero would need to move money between related parties, he would pay down -- when I say him, he would have us in corporate accounting move money around, pay off notes, reissue new notes somewhere else. So a way to move money around between his entities.

Id. 470 (21:10-16). Stated differently, at that time “it’s all one big happy family, and whoever needed cash, the cash moved around.” *Id.* 472 (23:3-6).

30. In May, 2019, Mr. Klos sent one or two e-mails to Ms. Hendrix—emails on which Mr. Waterhouse but not Mr. Dondero or the legal department were copied—informing her that there were new intercompany loans and asking her to prepare notes for execution. *Id.* 481-82 (32:13-33:4). This instruction comported with the general practice:

So is it fair to say that typically, obviously not every time, but typically your corporate accounting group when it would see intercompany transfers in large amounts would believe that they were loans?

MR. MORRIS: Objection to the form of the question.

THE WITNESS: Typically they were loans. There’s not really another way to get money from one entity to another. And if they were papered as a loan, that means we were told to set it up that way.

Id. 484 (35:5-15). That is “how it was for 14 or 15 years.” *Id.* 485 (36:7-9).

31. Ms. Hendrix confirmed that the \$2.4 million Note was “related to a TerreStar NAV error” and the \$5 million Note was for the “consent fee.” *Id.* 487-88 (38:17-39:5). Ms. Hendrix was never “told to [her] directly” that the funds were a loan, but she [subject to objection] “assum[ed] that based on many instances of intercompany transfers in the 14 years prior.” *Id.* 489 (40:20-25).

32. Ms. Hendrix confirmed that she prepared the Notes from Word documents originally created by outside counsel. *Id.* 491 (42:15-43:20). However, Ms. Hendrix had no memory of papering the Notes. *Id.* 494 (45:21-46:1). It would have been her practice to not consult the legal group in preparing the Notes. *Id.* 495 (46:12-24). Ms. Hendrix confirmed that, to sign Mr. Waterhouse's name to the Notes, she used an electronic picture of his signature, which she then affixed to the Word documents, the same as the undersigned counsel does below:

A handwritten signature in blue ink, appearing to read "John Waterhouse".

33. On the question of whether Mr. Waterhouse authorized Ms. Hendrix to affix his signature to the Notes, Ms. Hendrix testified "I don't have exact specific memory." *Id.* 497 (48:10-15). Again, she appears to have assumed that Mr. Waterhouse must have approved the Notes and, therefore, her using his signature:

He was fine with using his e-signature, and what is on these documents was that exact e-signature.

* * *

But he would have had to approve this loan in the dollar amount, the day. He would have been the one directing us to create these loans. In past practice he has always approved using his e-signature to execute documents.

Id. 497(48:4-18). When pressed about *how* Mr. Waterhouse would have authorized his electronic signature to be used, Ms. Hendrix testified as follows [subject to objection]:

I would assume that, as I've stated previously, these directions were coming directly from him to paper a loan. These changes that are made are only to the dollar amount. Interest rate is pulled right off the IRS website. That is his approval to paper a loan and in fact execute or approve the loan.

Id. 497-98 (48:24-49:5).

34. Then, when asked [subject to objection] “after his e-signature was used either on these notes or other documents in May of 2019, would you have brought the documents back to him for any kind of verification,” Ms. Hendrix testified:

Probably not. These are all very standard. We’ve papered hundreds of loans. So I think he trusted that we can handle updating a date and a dollar amount on these loan templates.

Id. 499 (50:1-9).

35. Ms. Hendrix also testified [subject to objection], differently from Mr. Waterhouse, that “[p]robably at this time, 99 percent of the stuff my team got his signature on was his e-signature.” *Id.* 498 (49:12-16). And, the following exchange is significant:

Q. (BY MR. RUKAVINA) Do you know or believe, or your recent review of documents, did it reveal an email from Mr. Waterhouse to you specifically authorizing his e-signature on Exhibits 4 and/or 5?

A. Not that I recall seeing, no.

Q. Sitting here today, do you have any memory of Mr. Waterhouse orally or otherwise specifically authorizing you to affix his e-signature to Exhibits 4 and/or 5?

A. Specifically on these loans, no, I don’t recall those conversations. But, again, our practice has always been we have this discussion, he’s under the understanding that we’re going to paper the loans, he’s always comfortable with using his e-signature. This is not something me or my team would have done without that authority and approval from him.

Id. 499 (50:15-25).

36. And, there is no evidence that Ms. Hendrix ever showed the Notes to Waterhouse after preparing them:

Q. Sitting here today, do you have any memory of giving Mr. Waterhouse these two promissory notes after they were prepared?

A. I specifically don’t remember walking into his office and providing it to him, but he could have found it on our shared drive if he wanted to.

Q. Do you have any memory or in your recent review of documents did you see any email to the effect of you sending either or both of these promissory notes to Mr. Waterhouse after they were papered up?

A. I don't have any specific recollection, again, but he had access to look at them.

Q. On the shared drive?

A. Yes.

Id. 503 (54:4-17). Scanning in the Notes and then saving them to the system, is hardly a substitute for showing or giving them to the man who is personally liable on them to the tune of \$7.4 million.

37. Ms. Hendrix *assumed* that the transfers were loans and *assumed* that Mr. Waterhouse authorized her to affix his signature to the Notes because she *assumed* that he approved of the Notes. But her testimony directly conflicts with his: whereas he testified that he rarely used electronic signatures in May, 2019, and would have had to send an e-mail authorizing the same, and would have expected that the legal department would approve a note prior to his signature, she testified that he routinely did this at that time pursuant to some generalized authority and that the accounting department routinely papered notes.

38. The fact remains that, notwithstanding her good faith, Ms. Hendrix created erroneous notes (as they appear to make Mr. Waterhouse the “maker” and to make him jointly and severally liable), and she was not authorized—at least there is no evidence that she was authorized—to affix images of Mr. Waterhouse’s signature to the Notes or, if there was some generalized authority that she believed Mr. Waterhouse gave her, then the condition precedent—that the legal department approve the Notes—was not satisfied.

IV. ARGUMENTS AND AUTHORITIES

39. This Motion is necessarily driven by the facts; hence the lengthy discussion of recent discovery proceedings above. From those facts, the following sequence emerges:

- (i) Mr. Dondero told Mr. Waterhouse to transfer the funds, and Mr. Waterhouse does not recall Mr. Dondero telling him that this was a loan, perhaps assuming this to be the case.
- (ii) Mr. Waterhouse told Mr. Klos to process the transfers, and perhaps he also told him that the funds are a loan. Either way, pursuant to standard practice, Mr. Klos believed that the funds were a loan and instructed others to paper up the Notes, without any instruction from Mr. Dondero that the transfers were a loan.
- (iii) Ms. Hendrix then, again pursuant to standard practice, took an old form for a note and populated it with new details and created the Notes.
- (iv) Mr. Waterhouse did not sign the Notes. Instead, Ms. Hendrix affixed pictures of his signature on the Notes. She did not then provide the Notes to him.
- (v) There is no evidence that Mr. Waterhouse authorized Ms. Hendrix to do so. Neither Mr. Waterhouse nor Ms. Hendrix remembers any such express authorization. Moreover, Mr. Waterhouse confirmed that, if he authorized an electronic signature, he would have e-mailed such authority to his administrative assistant. Ms. Hendrix was not his administrative assistant. And, Mr. Waterhouse confirmed that he would only sign a note if the legal department approved the note, which did not occur here.

40. HCMFA therefore submits that Ms. Hendrix, in good faith and acting pursuant to an established course and pattern, was not authorized to affix Mr. Waterhouse's signature to the Notes. Instead, she *assumed* that, as Mr. Waterhouse had authorized the Notes, she was authorized to sign them for him. And, despite Mr. Waterhouse's expectations, none of this went through the legal department. Hence the result, where Mr. Waterhouse signed as "maker" and is *prima facie* jointly liable, something that he confirmed was a mistake. But it is the same note—if that is a mistake, then so is the whole note.

41. Importantly, the Scheduling Order does not provide for a deadline to seek leave to amend the operative pleadings. *See* Docket No. 67. This means that, unlike the heightened "good cause" standard under Rule 16, the more lenient standard of Rule 15 applies to this Motion. That rule provides that "[t]he court should freely give [leave] when justice so requires." FED. R. CIV. P. 15(a)(2). The Court must "possess a 'substantial reason' to deny a request for leave to amend." *Smith v. EMC Corp.*, 393 F.3d 590, 595 (5th Cir. 2004). The Fifth Circuit has outlined five

“considerations” guiding the Rule 15 inquiry: “1) undue delay, 2) bad faith or dilatory motive, 3) repeated failure to cure deficiencies by previous amendments, 4) undue prejudice to the opposing party, and 5) futility of the amendment.” *Id.*

42. There has been no undue delay. As discussed above and evidenced with the Appendix, HCMFA did not know that Mr. Waterhouse did not sign the Notes until his deposition, as he had previously told HCMFA that he assumed he must have signed the Notes since the Notes bear his signature. It is the Debtor who delayed in producing the original Notes, requested in May, 2021, until late October, 2021, going so far as to even say that it would not produce the originals on October 19, 2021 (a decision which, to its credit, it subsequently reversed). Had the Debtor produced the originals in May or June, as requested, it would have been obvious that the signatures were electronic signatures, and perhaps HCMFA would have reasonably questioned any authority to sign, but this did not happen due to the Debtor’s delay. And, it was not until HCMFA deposed Mr. Waterhouse, Ms. Hendrix, and Mr. Klos that the facts were learned. There is nothing that HCMFA could have done to expedite this process. On the contrary, discovery worked as it should have.

43. There is no bad faith or dilatory motive. All of HCMFA’s defenses are made in good faith and are supported by the evidence. That evidence may be subject to dispute and to contradictory evidence, but then that is the point of a trial. Certainly, there is enough testimony and evidence to support the defense that Mr. Waterhouse did not sign the Notes or authorize their signing. Nor is HCMFA trying to “weasel” its way out of a debt: the Debtor, through its negligence, caused a \$7.4 million liability to HCMFA. It was just and proper for the Debtor to compensate HCMFA, which it did. None of this is “invented” after the fact or presented in bad faith.

44. There are no repeated failures to cure deficiencies. True, this is the second motion to amend the answer. But, the first motion was necessitated by the simple fact that HCMFA did not have access to its books and records (then still under the control of the Debtor), and the Debtor had prohibited its employees, including Mr. Waterhouse, from discussing litigation matters with HCMFA. In many ways, that first motion should not have to count against HCMFA. Either way, for the same reasons as discussed above with respect to timing, HCMFA did not know and could not have known about this defense until the end of October, 2021, meaning that there was no prior “deficiency” to now cure.

45. There is no undue prejudice to the Debtor. Trial is not set. All of the people with knowledge of the Notes have been deposed, and if the Debtor needs additional discovery, then it can readily take it. The Debtor certainly believes that it already has strong arguments as to why HCMFA’s defenses have no merit, as it will no doubt present in opposition to this Motion. And, as the Debtor has had possession of the originals of the Notes all of this time, and as Ms. Hendrix and Mr. Klox are still the Debtor’s employees, as was Mr. Waterhouse through February, 2021, none of what is stated in this Motion should come as a surprise to the Debtor, as much as the Debtor may disagree with HCMFA’s position and arguments.

46. Finally, the amendment is not futile. Texas law provides for a recognized defense when a promissory note is not signed. *See* TEX. BUS. & COMM. CODE ANN. § 3.401(a).

47. Mr. Waterhouse, Mr. Klos, and Ms. Hendrix have each given testimony that raises serious doubt regarding whether Mr. Waterhouse actually signed the Notes or authorized his electronic signature—something that the Court cannot adjudicate at this stage. The Debtor will have every opportunity to argue at trial why the defense is wrong, and it will have every opportunity to present its evidence.

48. Accordingly, as no substantial reason exists to deny the amendment, and the interests of justice support freely granting leave, the Court should grant leave to the Defendant to amend its Answer.

V. PRAYER

WHEREFORE, PREMISES CONSIDERED, HCMFA respectfully requests that the Court enter an order: (i) granting this Motion; (ii) granting HCMFA leave to file the Amended Answer attached hereto as Exhibit “A”; and (iii) granting HCMFA such other and further relief to which it may be justly entitled.

RESPECTFULLY SUBMITTED this 30th day of November, 2021.

MUNSCH HARDT KOPF & HARR, P.C.

By: /s/ Davor Rukavina

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**COUNSEL FOR HIGHLAND CAPITAL
MANAGEMENT FUND ADVISORS, L.P.**

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that he discussed the relief requested herein with John Morris, Esq., counsel of record for the Debtor, who informed the undersigned that the Debtor opposes said relief.

/s/ Davor Rukavina

Davor Rukavina

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this the 30th day of November, 2021, true and correct copies of this document were electronically served by the Court's ECF system on parties entitled to notice thereof, including on the Plaintiff through its counsel of record.

/s/ Davor Rukavina

Davor Rukavina

EXHIBIT 218

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re	§	
	§	
HIGHLAND CAPITAL MANAGEMENT,	§	Chapter 11
L.P.,	§	
	§	Case No. 19-34054-sgj11
Debtor.	§	

HIGHLAND CAPITAL MANAGEMENT,	§	
L.P.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Adv. No. 21-03004
	§	
HIGHLAND CAPITAL MANAGEMENT	§	
FUND ADVISORS, L.P.	§	
	§	
Defendant.	§	

HIGHLAND CAPITAL MANAGEMENT,	§	
L.P.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Adv. No. 21-03005
	§	
NEXPOINT ADVISORS, L.P.,	§	
	§	
Defendant.	§	

DECLARATION OF DENNIS C. SAUTER, JR.

I, Dennis C. Sauter, Jr., hereby swear under oath and penalty of perjury pursuant to the laws of the United States of America that the following is true and correct to the best of my knowledge and belief:

I. INTRODUCTION

1. My name is Dennis C. Sauter, Jr. I am over the age of 21, have never been convicted of a felony or crime of moral turpitude, and am otherwise qualified to give this Declaration. I have personal knowledge of the facts stated in this Declaration, or such facts are known to me from my review of the books and records of Highland Capital Management Fund Advisors, L.P. ("HCMFA") and/or NexPoint Advisors, L.P. ("NexPoint").

2. I am an attorney licensed to practice law in the State of Texas, and have been such since 2001. I am in-house counsel for both HCMFA and NexPoint, and have been since at least January 1, 2021, which is why I am aware of both of these adversary proceedings. I have been responsible for managing outside counsel in both of these adversary proceedings since their filing, and I remain so responsible.

3. While I provided limited legal services to Highland Capital Management, L.P. (the "Debtor") and its affiliated entities as outside counsel before I became in-house counsel, those services were limited to real estate transactions having nothing to do with the facts discussed in this Declaration.

4. I am executing this Declaration in Support of the motions of both HCMFA and NexPoint to amend their answers in the above styled and numbered adversary proceedings initiated by the Debtor.

5. I am aware that both HCMFA and NexPoint previously sought and obtained permission to amend their answers in these adversary proceedings. Nevertheless, due to very recent events and discovery, HCMFA and NexPoint have determined that it is advisable to again amend their answers to assert certain defenses or affirmative defenses, which should by now have become clear to the Debtor as a result of very recent discovery, in order that justice may be done, that they may assert all available defenses and affirmative defenses, and that the trier of fact in

these adversary proceedings will have all relevant claims, defenses, and facts before it. Specifically:

- (i) HCMFA seeks to explicitly assert that Frank Waterhouse (“Waterhouse”) did not sign the two promissory notes that the Debtor has sued HCMFA on in adversary proceeding no. 21-03004; and
- (ii) NexPoint seeks to explicitly assert that it had prepaid the promissory note in question in adversary proceeding no. 21-03005 and that, accordingly, the December 31, 2020 payment had been satisfied by prepayment.

II. BACKGROUND

6. HCMFA and NexPoint are registered advisors under the Investment Advisors Act of 1940. As such, they advise various independent funds which, in turn, are investment vehicles for a large number of investors.

7. HCMFA and NexPoint have always had very few employees. During 2019, for example, HCMFA had only 7 to 9 employees.

8. Instead, most of the services needed by HCMFA to transact its business were provided by the Debtor pursuant to that certain *Second Amended and Restated Shared Services Agreement* dated February 8, 2013 (the “HCMFA Agreement”), a true and correct copy of which is attached hereto as Exhibit 1, while most of the services needed by NexPoint to transact its business were provided by the Debtor pursuant to that certain *Amended and Restated Shared Services Agreement* dated January 1, 2018 (the “NexPoint Agreement,” with the HCMFA Agreement, the “Shared Services Agreements”), a true and correct copy of which is attached hereto as Exhibit 2.

9. This was standard business practice for the Debtor and various other affiliated companies, including other advisers, within the Debtor’s “complex” of business: the Debtor would

employ most of the employees and then share those employees with HCMFA, NexPoint, and other “complex” entities, in exchange for payments by such entities.

10. Thus, under the Shared Services Agreements, employees of the Debtor (many of whom were highly trained and specialized) provided many key services to HCMFA and NexPoint on an as-needed basis. These services included legal, accounting, treasury, regulatory, compliance, IT, and tax services, among others. Additionally, under the Shared Services Agreements, the Debtor provided critical electronic infrastructure to HCMFA and other “complex” entities, such that the books and records, and e-mail communications, of HCMFA were actually stored on the Debtor’s servers.

11. On January 22, 2021, the Debtor filed its *Complaint for (i) Breach of Contract and (ii) Turnover of Property of the Debtor’s Estate* (the “HCMFA Complaint”) against HCMFA, seeking to recover on two alleged promissory notes, each dated May 2, 2019 (the “HCMFA Notes”): (i) a note for \$5 million; and (ii) a note for \$2.4 million. HCMFA timely answered.

12. On January 22, 2021, the Debtor also filed its *Complaint for (i) Breach of Contract and (ii) Turnover of Property of the Debtor’s Estate* (the “NexPoint Complaint,” with the HCMFA Complaint, the “Complaints”) against NexPoint, seeking to recover on an alleged promissory note dated May 31, 2017 in the original principal amount of \$30,746,812.33 (the “NexPoint Note,” with the HCMFA Notes, the “Notes”). NexPoint timely answered.

13. At the time that the Debtor filed the Complaints, I promptly undertook an internal review of the background facts concerning the Notes. I had no knowledge of them, since I had not been employed by HCMFA or NexPoint at the time that they were allegedly executed, and the few direct employees of HCMFA and NexPoint likewise had limited knowledge of the Notes. I also discussed the Notes with James Dondero, president of HCMFA and NexPoint, and formerly the CEO of the Debtor, and Mr. Dondero recalled only high-level details of the Notes. My review of

the limited books and records of HCMFA and NexPoint that were not then in the possession of the Debtor did not reveal any background facts regarding the Notes.

14. Normally, I would have discussed the Notes with employees of the Debtor who also provided services to HCMFA and NexPoint pursuant to the Shared Services Agreements in order to assess what defenses or affirmative defenses to the Complaint existed. However, in this instance I was precluded from doing so.

15. First, attached hereto as Exhibit 3 is a true and correct copy of an e-mail exchange between myself and Mr. James Seery dated September 17, 2020. Mr. Seery was and remains the Chief Executive Officer of the Debtor. As stated in Exhibit 2, Mr. Seery informed me that Debtor employees had been instructed not to discuss with me anything that is “inimical” to the interests of the Debtor, and that they would be terminated if they did so. This e-mail communication comports with other communications between myself and Mr. Seery where he cautioned me not to discuss with Debtor employees matters that may be adverse to the Debtor.

16. Second, by the time of the filing of the Complaints, the Court had entered a preliminary injunction against Mr. Dondero, a true and correct copy of which is attached hereto as Exhibit 4. That injunction prohibited Mr. Dondero from “directly or indirectly . . . communicating with any of the Debtor’s employees, except as it specifically relates to shared services currently provided.” As the information concerning the Notes was background information and not related to “services currently provided,” I was concerned that, if I discussed the Notes with the Debtor’s employees, the Debtor would argue that either Mr. Dondero or I was violating the Court’s injunction.

17. In sum, after the Complaints were filed, the employees of HCMFA or NexPoint knew very little about the Notes, and I was precluded from contacting the people that would have known information about the notes, *i.e.* the Debtor’s employees, to discuss what they may have

known. I also had very limited access to HCMFA's and NexPoint's books and records, and, even if I had had full access, I would not have known what relevant books and records to search for in the many millions of files without first obtaining a generalized background of the facts regarding the Notes from Debtor employees.

18. The situation changed by mid-April, 2021. As of late February, 2021, the Debtor terminated the Shared Services Agreements and terminated most of its former employees. Many of those employees then formed their own company, Skyview Group, which then contracted with HCMFA and NexPoint to continue providing essentially the same services that they had previously provided under the Shared Services Agreements. Additionally, the Debtor provided access to HCMFA and NexPoint to many of its books and records (although not all). Thus, as of March, 2021, I was able to communicate with most former Debtor employees and to access many books and records without fear of violating any court order.

19. March, 2021, was exceedingly busy, to say the least. With the termination of the Shared Services Agreements, HCMFA, NexPoint, other entities for which I am in-house counsel, and I were preoccupied with transitioning the services that the Debtor had been providing for more than a decade to a new entity, using new infrastructure, moving into new offices, setting up new networks, etc., all for the primary goal of ensuring a smooth and uninterrupted continuity of business and services provided by HCMFA and NexPoint and others to third parties.

20. By mid-April, 2021, the situation had calmed down to the point that I was able to discuss the Notes with former employees, most importantly Waterhouse and Will Mabry ("Mabry"). Mabry in particular was able to provide me internal documents and memoranda that I had not previously known about to that helped with the factual background of the Notes.

21. From these discussions and documents, I was able to better understand the factual background concerning the HCMFA Notes, ultimately concluding at the time that the Notes were

signed by mistake by Waterhouse without authority from HCMFA, had no consideration, and were never intended to be debt instruments of HCMFA. I testified as to these matters before based on my understanding, and HCMFA obtained leave to amend its answer to assert these defenses.

III. FACTS PERTINENT TO HCMFA

22. With respect to the HCMFA Notes, those notes appear to be signed by Waterhouse. At the time of those alleged Notes, Waterhouse was the Chief Financial Officer of the Debtor. At that time, he was also either the Chief Financial Officer, or Treasurer, of HCMFA (either way, an officer level position at HCMFA).

23. In the April, 2021 timeframe, when I discussed the HCMFA Notes with Waterhouse, I asked him whether he had signed those two notes. At that time, he told me that he believed that he had, because he had not been electronically signing documents in May, 2019 and the signatures on the notes looked like they were his. Although he did not remember many, if any, of the facts and circumstances concerning the HCMFA Notes, given that he told me that he believed he signed those notes because the signatures looked like they were his and because he signed a lot of documents and could not remember each one particularly, I did not have reasonable grounds to believe that Waterhouse had not in fact signed the HCMFA Notes or authorized his signature to be affixed to the HCMFA Notes. And, I was not prepared to assert a defense in which I did not have a good faith belief.

24. This changed in late October, 2021. On October 19, 2021, the Debtor and HCMFA deposed Waterhouse, including in connection with the HCMFA Notes. In that deposition, and among other things, Waterhouse testified that (and I am paraphrasing): (i) he did not remember signing the HCMFA Notes or giving anyone permission to sign his name to the same; (ii) his signatures on the HCMFA Notes appeared to be electronic signatures; and (iii) in May, 2019, he

sometimes signed documents electronically, but if he did so, he would have sent an e-mail to Kristen Hendrix (“Hendrix”) authorizing and instructing her to sign his name to a document.

25. Although I understand that HCMFA had requested the originals of the HCMFA Notes previously from the Debtor in discovery, I understand that those native documents were not produced until October 25, 2021. I understand that, when produced, those originals showed that Waterhouse’s signature was indeed an electronic signature on both of the HCMFA Notes and, unlike various electronic signatures that employ some control process or matrix certifying authenticity, here both signatures were merely pictures of his signatures. Indeed, one can copy and paste that same picture on to any document without any control or approval needed by Waterhouse, as I do below (below is the picture copied from the HCMFA Notes, originally in Word with the signature picture in “picture” format, probably .jpg).



26. Then, on October 27, 2021, HCMFA deposed Hendrix. In that deposition, and among other things, Hendrix testified that (and I am paraphrasing): (i) she prepared the HCMFA Notes from a Word document template, by inputting various details into the document and adding Waterhouse’s signature picture; (ii) she does not remember Waterhouse authorizing her to affix his signature, although she believes that this was likely the case; (iii) she does not remember printing out the documents and presenting them to Waterhouse for approval or signature; and (iv) she does not remember whether the HCMFA Notes were printed out at all or if they were simply saved in their original electronic format on the Debtor’s system.

27. Importantly, Hendrix remained an employee of the Debtor after the Debtor terminated most employees around February, 2021. Thus, neither I nor anyone else with HCMFA or NexPoint was able to talk to her directly regarding the Notes, and neither I nor, to my

knowledge, anyone else working with or for HCMFA or NexPoint did so. In other words, her deposition was the first time that HCMFA and NexPoint learned what she had to say of relevance to the Notes.

28. Additionally, as noted above, Waterhouse testified that, if he had authorized Hendrix or someone else to electronically sign his name to a document, he would have done so through an e-mail. I understand from Munsch Hardt that the Debtor has produced no such e-mail in discovery.

29. Therefore, HCMFA now believes that Waterhouse never in fact signed the HCMFA Notes or authorized Hendrix or anyone else to sign his name to the HCMFA Notes, and HCMFA finds it advisable and appropriate to amend its answer to explicitly assert this defense.

30. HCMFA did not know, and could not reasonably have known, about this defense until the end of October, 2021, after the Hendrix deposition transcript was prepared. HCMFA did not delay in any way in seeking to assert this defense. As noted above, had Waterhouse not told me in April, 2021 that he assumed that he signed the HCMFA Notes because the signatures looked like his, or had he given me any indication that he had not in fact signed the HCMFA Notes, then HCMFA would have asserted this defense sooner. As is, however, it was not until discovery in late October, 2021 that HCMFA learned that Waterhouse apparently did not sign the HCMFA Notes or authorize his electronic signature, and HCMFA did not delay thereafter in promptly seeking to amend its answer.

31. HCMFA therefore respectfully requests leave to amend its answer to expressly plead that the HCMFA Notes were never in fact signed.

IV. FACTS PERTINENT TO NEXPOINT

32. The NexPoint note was in the original principal amount of \$30,746,812.33. The note required an annual payment of principal and interest. By December 31, 2020, the amount due

on the NexPoint note was approximately \$24,471,804.98. Thus, even though the NexPoint Note was dated May 31, 2017 and had a thirty (30) year amortization, meaning that there should have been only three (3) annual payments by December 31, 2020 (2017, 2018, and 2019), the amount of the NexPoint Note was significantly lower than it should have been.

33. This was one of the issues I discussed with Waterhouse in April, 2021 when I was able to finally discuss the Notes with him. In particular, I asked him why the amount due on the NexPoint Note was significantly less than it appeared that it should have been based on its original principal amount and annual payments. Waterhouse did not know the answer to that question, but informed me that the payment ledger kept by the Debtor for that note should have the answer.

34. Like HCMFA, NexPoint deposed Hendrix on October 27, 2021. During that deposition, it was learned that a document the Debtor produced, bates-labeled D-NNL-029141, was the internal Debtor-maintained payment ledger for the NexPoint Note. The Debtor had produced this document before, in early June, 2021, but there were two problems: (i) NexPoint did not know that this document was *the* payment ledger for the NexPoint Note; and (ii) NexPoint had no context or ability to know what the entries on the document meant.

35. Indeed, Mr. James Seery, at his deposition on October 19, 2021, while confirming that the Debtor did maintain a payment ledger for the NexPoint Note and that the Debtor had produced the same, was unable to state whether document D-NNL-029141 was that ledger and, in fact, testified as to his belief that this document “is something else.” If the CEO and CRO of the Debtor was unsure what document D-NNL-029141 was, then NexPoint cannot reasonably be expected to know that that document was the official payment ledger until the October 27, 2019 deposition of Hendrix. Indeed, it was the Hendrix deposition that confirmed the existence of the prepayment defense because Hendrix testified that (I am paraphrasing): (i) if the Debtor needed

cash, then one of its affiliates, such as NexPoint, would transfer the Debtor funds; (ii) this occurred in 2019; and (iii) such transfers would have been recorded by the Debtor as prepayments.

36. NexPoint believes that that ledger proves that NexPoint had in fact prepaid the December 31, 2020 obligation under the NexPoint Note, such that there was no failure by NexPoint to make that payment and therefore no grounds to accelerate the NexPoint Note. That also explains why the principal amount of the NexPoint Note was significantly less than it would have been without prepayments.

37. NexPoint did not delay in seeking to expressly assert this prepayment defense. The payment ledger was a document of the Debtor that, prior to discovery, NexPoint did not have access to and, in fact, was prohibited by the Debtor from even trying to access. Once that document was produced by the Debtor in discovery, NexPoint used it at the appropriate depositions which, for scheduling reasons and by the agreement of the parties, did not occur until late October, 2021. As soon as logistically possible thereafter, NexPoint sought to assert this defense. While NexPoint questioned why the amount due on the NexPoint Note was significantly less, and while I personally sought an answer from Waterhouse (who did not know), that does not necessarily mean that the NexPoint Note was prepaid, as it could have been forgiven in part or otherwise treated, and NexPoint did not want to raise a defense without evidence to support the defense which, like I say above, did not come to light until late October, 2021, through discovery.

38. NexPoint therefore respectfully requests that it be granted leave to amend its answer to assert an additional defense that the December 31, 2020 payment on the NexPoint Note had been prepaid and that there was therefore no default in the failure to make the same, and no right to accelerate the NexPoint Note.

Signed: November 17, 2021


DENNIS C. SAUTER, JR.

**SECOND AMENDED AND RESTATED
SHARED SERVICES AGREEMENT**

THIS SECOND AMENDED AND RESTATED SHARED SERVICES AGREEMENT (this “**Agreement**”) is entered into to be effective as of 8th day of February, 2013 (the “**Effective Date**”) by and among Highland Capital Management, L.P., a Delaware limited partnership (“**HCMLP**”), and Highland Capital Management Fund Advisors, L.P., formerly known as Pyxis Capital, L.P., a Delaware limited partnership (“**HCMFA**”), and any affiliate of HCMFA that becomes a party hereto. Each of the signatories hereto is individually a “**Party**” and collectively the “**Parties**”.

RECITALS

A. During the Term, HCMLP will provide to HCMFA certain services as more fully described herein and the Parties desire to allocate the costs incurred for such services and assets among them in accordance with the terms and conditions in this Agreement.

AGREEMENT

In consideration of the foregoing recitals and the mutual covenants and conditions contained herein, the Parties agree, intending to be legally bound, as follows:

**ARTICLE I
DEFINITIONS**

“**Actual Cost**” means, with respect to any period hereunder, one hundred percent (100%) of the actual costs and expenses caused by, incurred or otherwise arising from or relating to (i) the Shared Services and (ii) the Shared Assets, in each case during such period.

“**Affiliate**” means a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a specified Person. The term “**control**” (including, with correlative meanings, the terms “**controlled by**” and “**under common control with**”) means the possession of the power to direct the management and policies of the referenced Person, whether through ownership interests, by contract or otherwise.

“**Agreement**” has the meaning set forth in the preamble.

“**Allocation Percentage**” has the meaning set forth in Section 4.01.

“**Applicable Margin**” shall mean an additional amount equal to 5% of all costs allocated by Service Provider to the other parties hereto under Article IV; provided that the parties may agree on a different margin percentage as to any item or items to the extent the above margin percentage, together with the allocated cost of such item or service, would not reflect an arm’s length value of the particular service or item allocated.

“**Change**” has the meaning set forth in Section 2.02(a).

“**Change Request**” has the meaning set forth in Section 2.02(b).

“**Code**” means the Internal Revenue Code of 1986, as amended, and the related regulations and published interpretations.

“Effective Date” has the meaning set forth in the preamble.

“Governmental Entity” means any government or any regulatory agency, bureau, board, commission, court, department, official, political subdivision, tribunal or other instrumentality of any government, whether federal, state or local, domestic or foreign.

“Liabilities” means any cost, liability, indebtedness, obligation, co-obligation, commitment, expense, claim, deficiency, guaranty or endorsement of or by any Person of any nature (whether direct or indirect, known or unknown, absolute or contingent, liquidated or unliquidated, due or to become due, accrued or unaccrued, matured or unmatured).

“Loss” means any cost, damage, disbursement, expense, liability, loss, obligation, penalty or settlement, including interest or other carrying costs, legal, accounting and other professional fees and expenses incurred in the investigation, collection, prosecution and defense of claims and amounts paid in settlement, that may be imposed on or otherwise incurred or suffered by the referenced Person; provided, however, that the term **“Loss”** will not be deemed to include any special, exemplary or punitive damages, except to the extent such damages are incurred as a result of third party claims.

“New Shared Service” has the meaning set forth in Section 2.03.

“Party” or **“Parties”** has the meaning set forth in the preamble.

“Person” means an association, a corporation, an individual, a partnership, a limited liability company, a trust or any other entity or organization, including a Governmental Entity.

“Quarterly Report” has the meaning set forth in Section 5.01.

“Recipient” means HCMFA and any of HCMFA’s direct or indirect Subsidiaries or managed funds or accounts in their capacity as a recipient of the Shared Services and/or Shared Assets.

“Service Provider” means any of HCMLP and its direct or indirect Subsidiaries in its capacity as a provider of Shared Services or Shared Assets.

“Service Standards” has the meaning set forth in Section 6.01.

“Shared Assets” shall have the meaning set forth in Section 3.02.

“Shared Services” shall have the meaning set forth in Section 2.01.

“Subsidiary” means, with respect to any Person, any Person in which such Person has a direct or indirect equity ownership interest in excess of 50%.

“Tax” or **“Taxes”** means: (i) all state and local sales, use, value-added, gross receipts, foreign, privilege, utility, infrastructure maintenance, property, federal excise and similar levies, duties and other similar tax-like charges lawfully levied by a duly constituted taxing authority against or upon the Shared Services and the Shared Assets; and (ii) tax-related surcharges or fees that are related to the Shared Services and the Shared Assets identified and authorized by applicable tariffs.

“Term” has the meaning set forth in Section 7.01.

ARTICLE II SHARED SERVICES

Section 2.01 Services. During the Term, Service Provider will provide Recipient with Shared Services, including without limitation, all of the (i) finance and accounting services, (ii) human resources services, (iii) marketing services, (iv) legal services, (v) corporate services, (vi) information technology services, and (vii) operations services; each as requested by HCMFA and as described more fully on Annex A attached hereto, the “*Shared Services*”), it being understood that personnel providing Shared Services may be deemed to be employees of HCMFA to the extent necessary for purposes of the Investment Advisers Act of 1940, as amended.

Section 2.02 Changes to the Shared Services.

(a) During the Term, the Parties may agree to modify the terms and conditions of a Service Provider’s performance of any Shared Service in order to reflect new procedures, processes or other methods of providing such Shared Service, including modifying the applicable fees for such Shared Service to reflect the then current fair market value of such service (a “*Change*”). The Parties will negotiate in good faith the terms upon which a Service Provider would be willing to provide such New Shared Service to Recipient.

(b) The Party requesting a Change will deliver a description of the Change requested (a “*Change Request*”) and no Party receiving a Change Request may unreasonably withhold, condition or delay its consent to the proposed Change.

(c) Notwithstanding any provision of this Agreement to the contrary, a Service Provider may make: (i) Changes to the process of performing a particular Shared Service that do not adversely affect the benefits to Recipient of Service Provider’s provision or quality of such Shared Service in any material respect or increase Recipient’s cost for such Shared Service; (ii) emergency Changes on a temporary and short-term basis; and/or (iii) Changes to a particular Shared Service in order to comply with applicable law or regulatory requirements, in each case without obtaining the prior consent of Recipient. A Service Provider will notify Recipient in writing of any such Change as follows: in the case of clauses (i) and (iii) above, prior to the implementation of such Change, and, in the case of clause (ii) above, as soon as reasonably practicable thereafter.

Section 2.03 New Shared Services. The Parties may, from time to time during the Term of this Agreement, negotiate in good faith for Shared Services not otherwise specifically listed in Section 2.01 (a “*New Shared Service*”). Any agreement between the Parties on the terms for a New Shared Service must be in accordance with the provisions of Article IV and Article V hereof, will be deemed to be an amendment to this Agreement and such New Shared Service will then be a “*Shared Service*” for all purposes of this Agreement.

Section 2.04 Subcontractors. Nothing in this Agreement will prevent Service Provider from, with the consent of Recipient, using subcontractors, hired with due care, to perform all or any part of a Shared Service hereunder. A Service Provider will remain fully responsible for the performance of its obligations under this Agreement in accordance with its terms, including any obligations it performs through subcontractors, and a Service Provider will be solely responsible for payments due to its subcontractors.

ARTICLE III SHARED ASSETS

Section 3.01 Shared IP Rights. Each Service Provider hereby grants to Recipient a non-exclusive right and license to use the intellectual property and other rights granted or licensed, directly or indirectly, to such Service Provider (the “*Shared IP Rights*”) pursuant to third party intellectual property Agreements (“*Third Party IP Agreements*”), provided that the rights granted to Recipient hereunder are subject to the terms and conditions of the applicable Third Party IP Agreement, and that such rights shall terminate, as applicable, upon the expiration or termination of the applicable Third Party IP Agreement. Recipient shall be licensed to use the Shared IP Rights only for so long as it remains an Affiliate of HCMLP. In consideration of the foregoing licenses, Recipient agrees to take such further reasonable actions as a Service Provider deems to be necessary or desirable to comply with its obligations under the Third Party IP Agreements.

Section 3.02 Other Shared Assets. Subject to Section 3.01, each Service Provider hereby grants Recipient the right, license or permission, as applicable, to use and access the benefits under the agreements, contracts and licenses that such Service Provider will purchase, acquire, become a party or beneficiary to or license on behalf of Recipient (the “*Future Shared Assets*” and collectively with the Shared IP Rights, the “*Shared Assets*”).

ARTICLE IV COST ALLOCATION

Section 4.01 Actual Cost Allocation Formula. The Actual Cost of any item relating to any Shared Services or Shared Assets shall be allocated based on the Allocation Percentage. For purposes of this Agreement, “*Allocation Percentage*” means:

- (a) To the extent 100% of such item is demonstrably attributable to HCMFA, 100% of the Actual Cost of such item shall be allocated to HCMFA as agreed by HCMFA;
- (b) To the extent a specific percentage of use of such item can be determined (e.g., 70% for HCMLP and 30% for HCMFA), that specific percentage of the Actual Cost of such item will be allocated to HCMLP or HCMFA, as applicable and as agreed by HCMFA; and
- (c) All other portions of the Actual Cost of any item that cannot be allocated pursuant to clause (a) or (b) above shall be allocated between HCMLP and HCMFA in such proportion as is agreed in good faith between the parties.

Section 4.02 Non-Cash Cost Allocation. The actual, fully burdened cost of any item relating to any Shared Services or Shared Assets that does not result in a direct, out of pocket cash expense may be allocated to HCMLP and HCMFA for financial statement purposes only, as agreed by HCMFA, without any corresponding cash reimbursement required, in accordance with generally accepted accounting principles, based on the Allocation Percentage principles described in Section 4.01 hereof.

ARTICLE V PAYMENT OF COST AND REVENUE SHARE; TAXES

Section 5.01 Quarterly Statements. Within thirty (30) days following the end of each calendar quarter during the Term (or at such time as may be otherwise agreed by the parties), each Service Provider shall furnish the other Parties hereto with a written statement with respect to the Actual Cost paid by it in respect of Shared Services and Shared Assets provided by it, in each case, during such

period, setting forth (i) the cost allocation in accordance with Article IV hereof together with the Applicable Margin on such allocated amounts, and (ii) any amounts paid pursuant to Section 5.02 hereof, together with such other data and information necessary to complete the items described in Section 5.03 hereof (hereinafter referred to as the “Quarterly Report”).

Section 5.02 Settlement Payments. At any time during the Term, any Party may make payment of the amounts that are allocable to such Party together with the Applicable Margin related thereto, regardless of whether an invoice pursuant to Section 5.03 hereof has been issued with respect to such amounts.

Section 5.03 Determination and Payment of Cost and Revenue Share.

(a) Within ten (10) days of the submission of the Quarterly Report described in Section 5.02 hereof (or at such other time as may be agreed by the parties), the Parties shall (i) agree on the cost share of each of the Parties and Applicable Margin as calculated pursuant to the provisions of this Agreement; and (ii) prepare and issue invoices for the cost share and Applicable Margin payments that are payable by any of the Parties.

(b) Within ten (10) days of preparation of the agreement and the issuance of the invoice described in Section 5.03(a) (or at such other time as may be agreed by the parties), the Parties shall promptly make payment of the amounts that are set forth on such cost allocation invoice. Notwithstanding anything in this Agreement to the contrary, provision of the Shared Services shall commence from the Effective Date, but no fees shall be payable from Recipient or otherwise accrue with respect to such services provided during the month of December 2011.

Section 5.04 Taxes.

(a) Recipient is responsible for and will pay all Taxes applicable to the Shared Services and the Shared Assets provided to Recipient, provided, that such payments by Recipient to Service Provider will be made in the most tax-efficient manner and provided further, that Service Provider will not be subject to any liability for Taxes applicable to the Shared Services and the Shared Assets as a result of such payment by Recipient. Service Provider will collect such Tax from Recipient in the same manner it collects such Taxes from other customers in the ordinary course of Service Provider’s business, but in no event prior to the time it invoices Recipient for the Shared Services and Shared Assets, costs for which such Taxes are levied. Recipient may provide Service Provider with a certificate evidencing its exemption from payment of or liability for such Taxes.

(b) Service Provider will reimburse Recipient for any Taxes collected from Recipient and refunded to Service Provider. In the event a Tax is assessed against Service Provider that is solely the responsibility of Recipient and Recipient desires to protest such assessment, Recipient will submit to Service Provider a statement of the issues and arguments requesting that Service Provider grant Recipient the authority to prosecute the protest in Service Provider’s name. Service Provider’s authorization will not be unreasonably withheld. Recipient will finance, manage, control and determine the strategy for such protest while keeping Service Provider reasonably informed of the proceedings. However, the authorization will be periodically reviewed by Service Provider to determine any adverse impact on Service Provider, and Service Provider will have the right to reasonably withdraw such authority at any time. Upon notice by Service Provider that it is so withdrawing such authority, Recipient will expeditiously terminate all proceedings. Any adverse consequences suffered by Recipient as a result of the withdrawal will be submitted to arbitration pursuant to Section 9.14. Any contest for Taxes brought by Recipient may not result in any lien attaching to any property or rights of Service Provider or otherwise jeopardize Service Provider’s interests or rights in any of its property. Recipient agrees to

indemnify Service Provider for all Losses that Service Provider incurs as a result of any such contest by Recipient.

(c) The provisions of this Section 5.04 will govern the treatment of all Taxes arising as a result of or in connection with this Agreement notwithstanding any other Article of this Agreement to the contrary.

ARTICLE VI SERVICE PROVIDER RESPONSIBILITIES

Section 6.01 Service Provider General Obligations. Service Provider will provide the Shared Services and the Shared Assets to Recipient on a non-discriminatory basis and will provide the Shared Services and the Shared Assets in the same manner as if it were providing such services and assets on its own account (the “*Service Standards*”). Service Provider will conduct its duties hereunder in a lawful manner in compliance with applicable laws, statutes, rules and regulations and in accordance with the Service Standards, including, for avoidance of doubt, laws and regulations relating to privacy of customer information.

Section 6.02 Books and Records; Access to Information. Service Provider will keep and maintain books and records on behalf of Recipient in accordance with past practices and internal control procedures. Recipient will have the right, at any time and from time to time upon reasonable prior notice to Service Provider, to inspect and copy (at its expense) during normal business hours at the offices of Service Provider the books and records relating to the Shared Services and Shared Assets, with respect to Service Provider’s performance of its obligations hereunder. This inspection right will include the ability of Recipient’s financial auditors to review such books and records in the ordinary course of performing standard financial auditing services for Recipient (but subject to Service Provider imposing reasonable access restrictions to Service Provider’s and its Affiliates’ proprietary information and such financial auditors executing appropriate confidentiality agreements reasonably acceptable to Service Provider). Service Provider will promptly respond to any reasonable requests for information or access. For the avoidance of doubt, all books and records kept and maintained by Service Provider on behalf of Recipient shall be the property of Recipient, and Service Provider will surrender promptly to Recipient any of such books or records upon Recipient’s request (provided that Service Provider may retain a copy of such books or records) and shall make all such books and records available for inspection and use by the Securities and Exchange Commission or any person retained by Recipient at all reasonable times. Such records shall be maintained by Service Provider for the periods and in the places required by laws and regulations applicable to Recipient.

Section 6.03 Return of Property and Equipment. Upon expiration or termination of this Agreement, Service Provider will be obligated to return to Recipient, as soon as is reasonably practicable, any equipment or other property or materials of Recipient that is in Service Provider’s control or possession.

ARTICLE VII TERM AND TERMINATION

Section 7.01 Term. The term of this Agreement will commence as of the Effective Date and will continue in full force and effect until the first anniversary of the Effective Date (the “*Term*”), unless terminated earlier in accordance with Section 9.02. The Term shall automatically renew for successive one year periods unless sooner terminated under Section 7.02.

Section 7.02 Termination. Either Party may terminate this Agreement, with or without cause, upon at least 60 days advance written notice at any time prior to the expiration of the Term.

ARTICLE VIII LIMITED WARRANTY

Section 8.01 Limited Warranty. Service Provider will perform the Shared Services hereunder in accordance with the Service Standards. Except as specifically provided in this Agreement, Service Provider makes no express or implied representations, warranties or guarantees relating to its performance of the Shared Services and the granting of the Shared Assets under this Agreement, including any warranty of merchantability, fitness, quality, non-infringement of third party rights, suitability or adequacy of the Shared Services and the Shared Assets for any purpose or use or purpose. Service Provider will (to the extent possible and subject to Service Provider's contractual obligations) pass through the benefits of any express warranties received from third parties relating to any Shared Service and Shared Asset, and will (at Recipient's expense) assist Recipient with any warranty claims related thereto.

ARTICLE IX MISCELLANEOUS

Section 9.01 No Partnership or Joint Venture; Independent Contractor. Nothing contained in this Agreement will constitute or be construed to be or create a partnership or joint venture between or among HCM LP or HCM FA or their respective successors or assigns. The Parties understand and agree that, with the exception of the procurement by Service Provider of licenses or other rights on behalf of Recipient pursuant to Section 3.01, this Agreement does not make any of them an agent or legal representative of the other for any purpose whatsoever. With the exception of the procurement by Service Provider of licenses or other rights on behalf of Recipient pursuant to Section 3.01, no Party is granted, by this Agreement or otherwise, any right or authority to assume or create any obligation or responsibilities, express or implied, on behalf of or in the name of any other Party, or to bind any other Party in any manner whatsoever. The Parties expressly acknowledge that Service Provider is an independent contractor with respect to Recipient in all respects, including with respect to the provision of the Shared Services.

Section 9.02 Amendments; Waivers. Except as expressly provided herein, this Agreement may be amended only by agreement in writing of all Parties. No waiver of any provision nor consent to any exception to the terms of this Agreement or any agreement contemplated hereby will be effective unless in writing and signed by all of the Parties affected and then only to the specific purpose, extent and instance so provided. No failure on the part of any Party to exercise or delay in exercising any right hereunder will be deemed a waiver thereof, nor will any single or partial exercise preclude any further or other exercise of such or any other right.

Section 9.03 Schedules and Exhibits; Integration. Each Schedule and Exhibit delivered pursuant to the terms of this Agreement must be in writing and will constitute a part of this Agreement, although schedules need not be attached to each copy of this Agreement. This Agreement, together with such Schedules and Exhibits constitutes the entire agreement among the Parties pertaining to the subject matter hereof and supersedes all prior agreements and understandings of the Parties in connection therewith.

Section 9.04 Further Assurances. Each Party will take such actions as any other Party may reasonably request or as may be necessary or appropriate to consummate or implement the transactions contemplated by this Agreement or to evidence such events or matters.

Section 9.05 Governing Law. This Agreement and the legal relations between the Parties will be governed by and construed in accordance with the laws of the State of Texas applicable to contracts made and performed in such State and without regard to conflicts of law doctrines unless certain matters are preempted by federal law.

Section 9.06 Assignment. Except as otherwise provided hereunder, neither this Agreement nor any rights or obligations hereunder are assignable by one Party without the express prior written consent of the other Parties.

Section 9.07 Headings. The descriptive headings of the Articles, Sections and subsections of this Agreement are for convenience only and do not constitute a part of this Agreement.

Section 9.08 Counterparts. This Agreement and any amendment hereto or any other agreement delivered pursuant hereto may be executed in one or more counterparts and by different Parties in separate counterparts. All counterparts will constitute one and the same agreement and will become effective when one or more counterparts have been signed by each Party and delivered to the other Parties.

Section 9.09 Successors and Assigns; No Third Party Beneficiaries. This Agreement is binding upon and will inure to the benefit of each Party and its successors or assigns, and nothing in this Agreement, express or implied, is intended to confer upon any other Person or Governmental Entity any rights or remedies of any nature whatsoever under or by reason of this Agreement.

Section 9.10 Notices. All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement will be in writing and will be deemed to have been given: (i) immediately when personally delivered; (ii) when received by first class mail, return receipt requested; (iii) one day after being sent for overnight delivery by Federal Express or other overnight delivery service; or (iv) when receipt is acknowledged, either electronically or otherwise, if sent by facsimile, telecopy or other electronic transmission device. Notices, demands and communications to the other Parties will, unless another address is specified by such Parties in writing, be sent to the addresses indicated below:

If to HCMLP, addressed to:

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: General Counsel
Fax: (972) 628-4147

If to HCMFA, addressed to:

Highland Capital Management Fund Advisors, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: General Counsel
Fax: (972) 628-4147

Section 9.11 Expenses. Except as otherwise provided herein, the Parties will each pay their own expenses incident to the negotiation, preparation and performance of this Agreement, including the fees, expenses and disbursements of their respective investment bankers, accountants and counsel.

Section 9.12 Waiver. No failure on the part of any Party to exercise or delay in exercising any right hereunder will be deemed a waiver thereof, nor will any single or partial exercise preclude any further or other exercise of such or any other right.

Section 9.13 Severability. If any provision of this Agreement is held to be unenforceable for any reason, it will be adjusted rather than voided, if possible, to achieve the intent of the Parties. All other provisions of this Agreement will be deemed valid and enforceable to the extent possible.

Section 9.14 Arbitration; Jurisdiction. Notwithstanding anything contained in this Agreement or the Annexes hereto to the contrary, in the event there is an unresolved legal dispute between the parties and/or any of their respective officers, directors, partners, employees, agents, affiliates or other representatives that involves legal rights or remedies arising from this Agreement, the parties agree to submit their dispute to binding arbitration under the authority of the Federal Arbitration Act; provided, however, that either party or such applicable affiliate thereof may pursue a temporary restraining order and/or preliminary injunctive relief in connection with confidentiality covenants or agreements binding on the other party, with related expedited discovery for the parties, in a court of law, and, thereafter, require arbitration of all issues of final relief. The Arbitration will be conducted by the American Arbitration Association, or another, mutually agreeable arbitration service. The arbitrator(s) shall be duly licensed to practice law in the State of Texas. The discovery process shall be limited to the following: Each side shall be permitted no more than (i) two party depositions of six hours each. Each deposition is to be taken pursuant to the Texas Rules of Civil Procedure; (ii) one non-party deposition of six hours; (iii) twenty-five interrogatories; (iv) twenty-five requests for admission; (v) ten requests for production. In response, the producing party shall not be obligated to produce in excess of 5,000 total pages of documents. The total pages of documents shall include electronic documents; (vi) one request for disclosure pursuant to the Texas Rules of Civil Procedure. Any discovery not specifically provided for in this paragraph, whether to parties or non-parties, shall not be permitted. The arbitrator(s) shall be required to state in a written opinion all facts and conclusions of law relied upon to support any decision rendered. No arbitrator will have authority to render a decision that contains an outcome determinative error of state or federal law, or to fashion a cause of action or remedy not otherwise provided for under applicable state or federal law. Any dispute over whether the arbitrator(s) has failed to comply with the foregoing will be resolved by summary judgment in a court of law. In all other respects, the arbitration process will be conducted in accordance with the American Arbitration Association's dispute resolution rules or other mutually agreeable, arbitration service rules. The party initiating arbitration shall pay all arbitration costs and arbitrator's fees, subject to a final arbitration award on who should bear costs and fees. All proceedings shall be conducted in Dallas, Texas, or another mutually agreeable site. Each party shall bear its own attorneys fees, costs and expenses, including any costs of experts, witnesses and/or travel, subject to a final arbitration award on who should bear costs and fees. The duty to arbitrate described above shall survive the termination of this Agreement. Except as otherwise provided above, the parties hereby waive trial in a court of law or by jury. All other rights, remedies, statutes of limitation and defenses applicable to claims asserted in a court of law will apply in the arbitration.

Section 9.15 General Rules of Construction. For all purposes of this Agreement and the Exhibits and Schedules delivered pursuant to this Agreement: (i) the terms defined in Article I have the meanings assigned to them in Article I and include the plural as well as the singular; (ii) all accounting terms not otherwise defined herein have the meanings assigned under GAAP; (iii) all references in this Agreement to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of the body of this Agreement; (iv) pronouns of either gender or neuter will include, as appropriate, the other pronoun forms; (v) the words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision; (vi) "or" is not exclusive; (vii) "including" and "includes" will be deemed to be followed by "but not limited to" and "but is not limited to," "respectively; (viii) any definition of or

reference to any law, agreement, instrument or other document herein will be construed as referring to such law, agreement, instrument or other document as from time to time amended, supplemented or otherwise modified; and (ix) any definition of or reference to any statute will be construed as referring also to any rules and regulations promulgated thereunder.

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IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed by its duly authorized officers as of the day and year first above written.


HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its general partner

By: 
Name: James Dondero
Title: President

**HIGHLAND CAPITAL MANAGEMENT FUND
ADVISORS, L.P.**

By: Strand Advisors XVI, Inc., its general partner

By: 
Name: Brian Mitts
Title: Assistant Secretary

Annex A

Shared Services

Compliance

General compliance
Compliance systems

Facilities

Equipment
General Overhead
Office Supplies
Rent & Parking

Finance & Accounting

Book keeping
Cash management
Cash forecasting
Credit facility reporting
Financial reporting
Accounts payable
Accounts receivable
Expense reimbursement
Vendor management

HR

Drinks/snacks
Lunches
Recruiting

IT

General support & maintenance (OMS, development, support)
Telecom (cell, phones, broadband)
WSO

Legal

Corporate secretarial services
Document review and preparation
Litigation support
Management of outside counsel

Marketing and PR

Public relations

Tax

Tax audit support
Tax planning
Tax prep and filing

Investments

Investment research on an ad hoc basis as requested by HCMFA

Valuation Committee

Trading

Trading desk services

Operations

Trade settlement

AMENDED AND RESTATED SHARED SERVICES AGREEMENT

This Amended and Restated Shared Services Agreement (as amended, modified, waived, supplemented or restated from time to time in accordance with the terms hereof, this “Agreement”), dated effective as of January 1, 2018, is entered into by and between NexPoint Advisors, L.P., a Delaware limited partnership, as the management company hereunder (in such capacity, the “Management Company”), and Highland Capital Management, L.P., a Delaware limited partnership (“Highland”), as the staff and services provider hereunder (in such capacity, the “Staff and Services Provider” and together with the Management Company, the “Parties”).

R E C I T A L S

WHEREAS, the Staff and Services Provider is a registered investment adviser under the Investment Advisers Act of 1940, as amended (the “Advisers Act”);

WHEREAS, the Staff and Services Provider and the Management Company are engaged in the business of providing investment management services;

WHEREAS, the Parties entered into that certain Shared Services Agreement, dated effective as of January 1, 2013 (the “Original Agreement”);

WHEREAS, the Parties desire to amend and restate the Original Agreement and the Staff and Services Provider is hereby being retained to provide certain back- and middle-office services and administrative, infrastructure and other services to assist the Management Company in conducting its business, and the Staff and Services Provider is willing to make such services available to the Management Company, in each case, on the terms and conditions hereof;

WHEREAS, the Management Company may employ certain individuals to perform portfolio selection and asset management functions for the Management Company, and certain of these individuals may also be employed simultaneously by the Staff and Services Provider during their employment with the Management Company; and

WHEREAS, each Person employed by both the Management Company and the Staff and Services Provider as described above (each, a “Shared Employee”), if any, is and shall be identified on the books and records of each of the Management Company and the Staff and Services Provider (as amended, modified, supplemented or restated from time to time).

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree, and the Original Agreement is hereby amended, restated and replaced in its entirety as follows.

ARTICLE I

DEFINITIONS

Section 1.01 Certain Defined Terms. As used in this Agreement, the following terms shall have the following meanings:

"Affiliate" shall mean with respect to a Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the first Person. The term "control" means (i) the legal or beneficial ownership of securities representing a majority of the voting power of any person or (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether by contract or otherwise.

"Applicable Asset Criteria and Concentrations" means any applicable eligibility criteria, portfolio concentration limits and other similar criteria or limits which the Management Company instructs in writing to the Staff and Services Provider in respect of the Portfolio or one or more Accounts, as such criteria or limits may be modified, amended or supplemented from time to time in writing by the Management Company;

"Applicable Law" shall mean, with respect to any Person or property of such Person, any action, code, consent decree, constitution, decree, directive, enactment, finding, guideline, law, injunction, interpretation, judgment, order, ordinance, policy statement, proclamation, formal guidance, promulgation, regulation, requirement, rule, rule of law, rule of public policy, settlement agreement, statute, writ, or any particular section, part or provision thereof of any Governmental Authority to which the Person in question is subject or by which it or any of its property is bound.

"Client or Account" shall mean any fund, client or account advised by the Management Company, as applicable.

"Covered Person" shall mean the Staff and Services Provider, any of its Affiliates, and any of their respective managers, members, principals, partners, directors, officers, shareholders, employees and agents (but shall not include the Management Company, its subsidiaries or member(s) and any managers, members, principals, partners, directors, officers, shareholders, employees and agents of the Management Company or its subsidiaries or member(s) (in their capacity as such)).

"Governmental Authority" shall mean (i) any government or quasi-governmental authority or political subdivision thereof, whether national, state, county, municipal or regional, whether U.S. or non-U.S.; (ii) any agency, regulator, arbitrator, board, body, branch, bureau, commission, corporation, department, master, mediator, panel, referee, system or instrumentality of any such government, political subdivision or other government or quasi-government entity, whether non-U.S. or U.S.; and (iii) any court, whether U.S. or non-U.S.

"Indebtedness" shall mean: (a) all indebtedness for borrowed money and all other obligations, contingent or otherwise, with respect to surety bonds, guarantees of borrowed money, letters of credit and bankers' acceptances whether or not matured, and hedges and other derivative contracts and financial instruments; (b) all obligations evidenced by notes, bonds, debentures, or similar instruments, or incurred under bank guaranty or letter of credit facilities or credit agreements; (c) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to any property of the Management Company or any subsidiary; (d) all capital lease obligations; (e) all indebtedness guaranteed by such Person or any of its subsidiaries; and (f) all indebtedness guaranteed by such Person or any of its subsidiaries.

“Operating Guidelines” means any operating guidelines attached to any portfolio management agreement, investment management agreement or similar agreement entered into between the Management Company and a Client or Account.

“Portfolio” means the portfolio of securities and other assets, including without limitation, financial instruments, equity investments, collateral loan obligations, debt securities, preferred return notes and other similar obligations held directly or indirectly by, or on behalf of, Clients and Accounts from time to time;

“Securities Act” shall mean the Securities Act of 1933, as amended.

Section 1.02 Interpretation. The following rules apply to the use of defined terms and the interpretation of this Agreement: (i) the singular includes the plural and the plural includes the singular; (ii) “or” is not exclusive (unless preceded by “either”) and “include” and “including” are not limiting; (iii) unless the context otherwise requires, references to agreements shall be deemed to mean and include such agreements as the same may be amended, supplemented, waived and otherwise modified from time to time; (iv) a reference to a law includes any amendment or modification to such law and any rules or regulations issued thereunder or any law enacted in substitution or replacement thereof; (v) a reference to a Person includes its successors and assigns; (vi) a reference to a Section without further reference is to the relevant Section of this Agreement; (vii) the headings of the Sections and subsections are for convenience and shall not affect the meaning of this Agreement; (viii) “writing”, “written” and comparable terms refer to printing, typing, lithography and other shall mean of reproducing words in a visible form (including telefacsimile and electronic mail); (ix) “hereof”, “herein”, “hereunder” and comparable terms refer to the entire instrument in which such terms are used and not to any particular article, section or other subdivision thereof or attachment thereto; and (x) references to any gender include any other gender, masculine, feminine or neuter, as the context requires.

ARTICLE II

SERVICES

Section 2.01 General Authority. Highland is hereby appointed as Staff and Services Provider for the purpose of providing such services and assistance as the Management Company may request from time to time to, and if applicable, to make available the Shared Employees to, the Management Company in accordance with and subject to the provisions of this Agreement and the Staff and Services Provider hereby accepts such appointment. The Staff and Services Provider hereby agrees to such engagement during the term hereof and to render the services described herein for the compensation provided herein, subject to the limitations contained herein.

Section 2.02 Provision of Services. Without limiting the generality of Section 2.01 and subject to Section 2.04 (Applicable Asset Criteria and Concentrations) below, the Staff and Services Provider hereby agrees, from the date hereof, to provide the following back- and middle-office services and administrative, infrastructure and other services to the Management Company.

(a) *Back- and Middle-Office*: Assistance and advice with respect to back- and middle-office functions including, but not limited to, investment research, trade desk services,

including trade execution and settlement, finance and accounting, payments, operations, book keeping, cash management, cash forecasting, accounts payable, accounts receivable, expense reimbursement, vendor management, and information technology (including, without limitation, general support and maintenance (OMS, development, support), telecom (cellphones, telephones and broadband) and WSO);

(b) *Legal/Compliance/Risk Analysis.* Assistance and advice with respect to legal issues, litigation support, management of outside counsel, compliance support and implementation and general risk analysis;

(c) *Tax.* Assistance and advice with respect to tax audit support, tax planning and tax preparation and filing.

(d) *Management of Clients and Accounts.* Assistance and advice with respect to (i) the adherence to Operating Guidelines by the Management Company, and (ii) performing any obligations of the Management Company under or in connection with any back- and middle-office function set forth in any portfolio management agreement, investment management agreement or similar agreement in effect between the Management Company and any Client or Account from time to time.

(e) *Valuation.* Advice relating to the appointment of suitable third parties to provide valuations on assets comprising the Portfolio and including, but not limited to, such valuations required to facilitate the preparation of financial statements by the Management Company or the provision of valuations in connection with, or preparation of reports otherwise relating to, a Client or Account for which the Management Company serves as portfolio manager or investment manager or in a similar capacity;

(f) *Execution and Documentation.* Assistance relating to the negotiation of the terms of, and the execution and delivery by the Management Company of, any and all documents which the Management Company considers to be necessary in connection with the acquisition and disposition of an asset in the Portfolio by the Management Company or a Client or Account managed by the Management Company, transactions involving the Management Company or a Client or Account managed by the Management Company, and any other rights and obligations of the Management Company or a Client or Account managed by the Management Company;

(g) *Marketing.* Provide access to marketing team representatives to assist with the marketing of the Management Company and any specified Clients or Accounts managed by the Management Company conditional on the Management Company's agreement that any incentive compensation related to such marketing shall be borne by the Management Company;

(h) *Reporting.* Assistance relating to any reporting the Management Company is required to make in relation to the Portfolio or any Client or Account, including reports relating to (i) credit facility reporting and purchases, sales, liquidations, acquisitions, disposals, substitutions and exchanges of assets in the Portfolio, (ii) the requirements of an applicable regulator, or (iii) other type of reporting which the Management Company and Staff and Services Provider may agree from time to time;

(i) *Administrative Services.* The provision of office space, information technology services and equipment, infrastructure, rent and parking and other related services requested or utilized by the Management Company from time to time;

(j) *Shared Employees.* To the extent applicable, the provision of Shared Employees and such additional human capital as may be mutually agreed by the Management Company and the Staff and Services Provider in accordance with the provisions of Section 2.03 hereof;

(k) *Ancillary Services.* Assistance and advice on all things ancillary or incidental to the foregoing; and

(l) *Other.* Assistance and advice relating to such other back- and middle-office services in connection with the day-to-day business of the Management Company as the Management Company and the Staff and Services Provider may from time to time agree.

For the avoidance of doubt, none of the services contemplated hereunder shall constitute investment advisory services, and the Staff & Services Provider shall not provide any advice to the Management Company or perform any duties on behalf of the Management Company, other than the back- and middle-office services contemplated herein, with respect to (a) the general management of the Management Company, its business or activities, (b) the initiation or structuring of any Client or Account or similar securitization, (c) the substantive investment management decisions with respect to any Client or Account or any related collateral obligations or securitization, (d) the actual selection of any collateral obligation or assets by the Management Company, (e) binding recommendations as to any disposal of or amendment to any Collateral Obligation or (f) any similar functions.

Section 2.03 Shared Employees.

(a) The Staff and Services Provider hereby agrees and consents that each Shared Employee, if any, shall be employed by the Management Company, and the Management Company hereby agrees and consents that each Shared Employee shall be employed by the Staff and Services Provider. Except as may otherwise separately be agreed in writing between the applicable Shared Employee and the Management Company and/or the Staff and Services Provider, in each of their discretion, each Shared Employee is an at-will employee and no guaranteed employment or other employment arrangement is agreed or implied by this Agreement with respect to any Shared Employee, and for avoidance of doubt this Agreement shall not amend, limit, constrain or modify in any way the employment arrangements as between any Shared Employee and the Staff and Services Provider or as between any Shared Employee and the Management Company, it being understood that the Management Company may enter into a short-form employment agreement with any Shared Employee memorializing such Shared Employee's status as an employee of the Management Company. To the extent applicable, the Staff and Services Provider shall ensure that the Management Company has sufficient access to the Shared Employees so that the Shared Employees spend adequate time to provide the services required hereunder. The Staff and Services Provider may also employ the services of persons other than the Specified Persons as it deems fit in its sole discretion.

(b) Notwithstanding that the Shared Employees, if any, shall be employed by both the Staff and Services Provider and the Management Company, the Parties acknowledge and agree that any and all salary and benefits of each Shared Employee shall be paid exclusively by the Staff and Services Provider and shall not be paid or borne by the Management Company and no additional amounts in connection therewith shall be due from the Management Company to the Staff and Services Provider.

(c) To the extent that a Shared Employee participates in the rendering of services to the Management Company's clients, the Shared Employee shall be subject to the oversight and control of the Management Company and such services shall be provided by the Shared Employee exclusively in his or her capacity as a "supervised person" of, or "person associated with", the Management Company (as such terms are defined in Sections 202(a)(25) and 202(a)(17), respectively, of the Advisers Act).

(d) Each Party may continue to oversee, supervise and manage the services of each Shared Employee in order to (1) ensure compliance with the Party's compliance policies and procedures, (2) ensure compliance with regulations applicable to the Party and (3) protect the interests of the Party and its clients; *provided* that Staff and Services Provider shall (A) cooperate with the Management Company's supervisory efforts and (B) make periodic reports to the Management Company regarding the adherence of Shared Employees to Applicable Law, including but not limited to the 1940 Act, the Advisers Act and the United States Commodity Exchange Act of 1936, as amended, in performing the services hereunder.

(e) Where a Shared Employee provides services hereunder through both Parties, the Parties shall cooperate to ensure that all such services are performed consistently with Applicable Law and relevant compliance controls and procedures designed to prevent, among other things, breaches in information security or the communication of confidential, proprietary or material non-public information.

(f) The Staff and Services Provider shall ensure that each Shared Employee has any registrations, qualifications and/or licenses necessary to provide the services hereunder.

(g) The Parties will cooperate to ensure that information about the Shared Employees is adequately and appropriately disclosed to clients, investors (and potential investors), investment banks operating as initial purchaser or placement agent with respect to any Client or Account, and regulators, as applicable. To facilitate such disclosure, the Staff and Services Provider agrees to provide, or cause to be provided, to the Management Company such information as is deemed by the Management Company to be necessary or appropriate with respect to the Staff and Services Provider and the Shared Employees (including, but not limited to, biographical information about each Shared Employee).

(h) The Parties shall cooperate to ensure that, when so required, each has adopted a Code of Ethics meeting the requirements of the Advisers Act ("Code of Ethics") that is consistent with applicable law and which is substantially similar to the other Party's Code of Ethics.

(i) The Staff and Services Provider shall make reasonably available for use by the Management Company, including through Shared Employees providing services pursuant to this Agreement, any relevant intellectual property and systems necessary for the provision of the services hereunder.

(j) The Staff and Services Provider shall require that each Shared Employee:

(i) certify that he or she is subject to, and has been provided with, a copy of each Party's Code of Ethics and will make such reports, and seek prior clearance for such actions and activities, as may be required under the Codes of Ethics;

(ii) be subject to the supervision and oversight of each Party's officers and directors, including without limitation its Chief Compliance Officer ("CCO"), which CCO may be the same Person, with respect to the services provided to that Party or its clients;

(iii) provide services hereunder and take actions hereunder only as approved by the Management Company;

(iv) provide any information requested by a Party, as necessary to comply with applicable disclosure or regulatory obligations;

(v) to the extent authorized to transact on behalf of the Management Company or a Client or Account, take reasonable steps to ensure that any such transaction is consistent with any policies and procedures that may be established by the Parties and all Applicable Asset Criteria and Concentrations; and

(vi) act, at all times, in a manner consistent with the fiduciary duties and standard of care owed by the Management Company to its members and direct or indirect investors or to a Client or Account as well as clients of Staff and Services Provider by seeking to ensure that, among other things, information about any investment advisory or trading activity applicable to a particular client or group of clients is not used to benefit the Shared Employee, any Party or any other client or group of clients in contravention of such fiduciary duties or standard of care.

(k) Unless specifically authorized to do so, or appointed as an officer or authorized person of the Management Company with such authority, no Shared Employee may contract on behalf or in the name of the Management Company, acting as principal.

Section 2.04 Applicable Asset Criteria and Concentrations. The Management Company will promptly inform the Staff and Services Provider in writing of any Applicable Asset Criteria and Concentrations to which it agrees from time to time and the Staff and Services Provider shall take such Applicable Asset Criteria and Concentrations into account when providing assistance and advice in accordance with Section 2.02 above and any other assistance or advice provided in accordance with this Agreement.

Section 2.05 Compliance with Management Company Policies and Procedures. The Management Company will from time to time provide the Staff and Services Provider and the

Shared Employees, if any, with any policy and procedure documentation which it establishes internally and to which it is bound to adhere in conducting its business pursuant to regulation, contract or otherwise. Subject to any other limitations in this Agreement, the Staff and Services Provider will use reasonable efforts to ensure any services it and the Shared Employees provide pursuant to this Agreement complies with or takes account of such internal policies and procedures.

Section 2.06 Authority. The Staff and Services Provider's scope of assistance and advice hereunder is limited to the services specifically provided for in this Agreement. The Staff and Services Provider shall not assume or be deemed to assume any rights or obligations of the Management Company under any other document or agreement to which the Management Company is a party. Notwithstanding any other express or implied provision to the contrary in this Agreement, the activities of the Staff and Services Provider pursuant to this Agreement shall be subject to the overall policies of the Management Company, as notified to the Staff and Services Provider from time to time. The Staff and Services Provider shall not have any duties or obligations to the Management Company unless those duties and obligations are specifically provided for in this Agreement (or in any amendment, modification or novation hereto or hereof to which the Staff and Services Provider is a party).

Section 2.07 Third Parties.

(a) The Staff and Services Provider may employ third parties, including its affiliates, to render advice, provide assistance and to perform any of its duties under this Agreement; *provided* that notwithstanding the employment of third parties for any such purpose, the Staff and Services Provider shall not be relieved of any of its obligations or liabilities under this Agreement.

(b) In providing services hereunder, the Staff and Services Provider may rely in good faith upon and will incur no liability for relying upon advice of nationally recognized counsel (which may be counsel for the Management Company, a Client or Account or any Affiliate of the foregoing), accountants or other advisers as the Staff and Services Provider determines, in its sole discretion, is reasonably appropriate in connection with the services provided by the Staff and Services Provider under this Agreement.

Section 2.08 Management Company to Cooperate with the Staff and Services Provider. In furtherance of the Staff and Services Provider's obligations under this Agreement the Management Company shall cooperate with, provide to, and fully inform the Staff and Services Provider of, any and all documents and information the Staff and Services Provider reasonably requires to perform its obligations under this Agreement.

Section 2.09 Power of Attorney. If the Management Company considers it necessary for the provision by the Staff and Services Provider of the assistance and advice under this Agreement (after consultation with the Staff and Services Provider), it may appoint the Staff and Services Provider as its true and lawful agent and attorney, with full power and authority in its name to sign, execute, certify, swear to, acknowledge, deliver, file, receive and record any and all documents that the Staff and Services Provider reasonably deems appropriate or necessary in connection with the execution and settlement of acquisitions of assets as directed by the Management Company

and the Staff and Services Provider's powers and duties hereunder (which for the avoidance of doubt shall in no way involve the discretion and/or authority of the Management Company with respect to investments). Any such power shall be revocable in the sole discretion of the Management Company.

ARTICLE III

CONSIDERATION AND EXPENSES

Section 3.01 Consideration. As compensation for its performance of its obligations as Staff and Services Provider under this Agreement, the Staff and Services Provider will be entitled to receive a flat fee of \$168,000 per month (the "Staff and Services Fee"), payable monthly in advance on the first business day of each month.

Section 3.02 Costs and Expenses. Each party shall bear its own expenses; *provided* that the Management Company shall reimburse the Staff and Services Provider for any and all costs and expenses that may be borne properly by the Management Company.

Section 3.03 Deferral. Notwithstanding anything to the contrary contained herein, if on any date the Management Company determines that it would not have sufficient funds available to it to make a payment of Indebtedness, it shall have the right to defer any all and amounts payable to the Staff and Services Provider pursuant to this Agreement, including any fees and expenses; *provided* that the Management Company shall promptly pay all such amounts on the first date thereafter that sufficient amounts exist to make payment thereof.

ARTICLE IV

REPRESENTATIONS AND COVENANTS

Section 4.01 Representations. Each of the Parties hereto represents and warrants that:

(a) It has full power and authority to execute and deliver, and to perform its obligations under, this Agreement;

(b) this Agreement has been duly authorized, executed and delivered by it and constitutes its valid and binding, obligation, enforceable in accordance with its terms except as the enforceability hereof may be subject to (i) bankruptcy, insolvency, reorganization moratorium, receivership, conservatorship or other similar laws now or hereafter in effect relating to creditors' rights and (ii) general principles of equity (regardless of whether such enforcement is considered in a proceeding, in equity or at law);

(c) no consent, approval, authorization or order of or declaration or filing with any Governmental Authority is required for the execution of this Agreement or the performance by it of its duties hereunder, except such as have been duly made or obtained; and

(d) neither the execution and delivery of this Agreement nor the fulfillment of the terms hereof conflicts with or results in a breach or violation of any of the terms or provisions of, or constitutes a default under, (i) its constituting and organizational documents; or (ii) the terms

of any material indenture, contract, lease, mortgage, deed of trust, note, agreement or other evidence of indebtedness or other material agreement, obligation, condition, covenant or instrument to which it is a party or by which it is bound.

ARTICLE V

COVENANTS

Section 5.01 Compliance; Advisory Restrictions.

(a) The Staff and Services Provider shall reasonably cooperate with the Management Company in connection with the Management Company's compliance with its policies and procedures relating to oversight of the Staff and Services Provider. Specifically, the Staff and Services Provider agrees that it will provide the Management Company with reasonable access to information relating to the performance of Staff and Services Provider's obligations under this Agreement.

(b) This Agreement is not intended to and shall not constitute an assignment, pledge or transfer of any portfolio management agreement or any part thereof. It is the express intention of the parties hereto that this Agreement and all services performed hereunder comply in all respects with all (a) applicable contractual provisions and restrictions contained in each portfolio management agreement, investment management agreement or similar agreement and each document contemplated thereby; and (b) Applicable Laws (collectively, the "Advisory Restrictions"). If any provision of this Agreement is determined to be in violation of any Advisory Restriction, then the services to be provided under this Agreement shall automatically be limited without action by any person or entity, reduced or modified to the extent necessary and appropriate to be enforceable to the maximum extent permitted by such Advisory Restriction.

Section 5.02 Records; Confidentiality.

The Staff and Services Provider shall maintain or cause to be maintained appropriate books of account and records relating to its services performed hereunder, and such books of account and records shall be accessible for inspection by representatives of the Management Company and its accountants and other agents at any time during normal business hours and upon not less than three (3) Business Days' prior notice; *provided* that the Staff and Services Provider shall not be obligated to provide access to any non-public information if it in good faith determines that the disclosure of such information would violate any applicable law, regulation or contractual arrangement.

The Staff and Services Provider shall follow its customary procedures to keep confidential any and all information obtained in connection with the services rendered hereunder that is either (a) of a type that would ordinarily be considered proprietary or confidential, such as information concerning the composition of assets, rates of return, credit quality, structure or ownership of securities, or (b) designated as confidential obtained in connection with the services rendered by the Staff and Services Provider hereunder and shall not disclose any such information to non-affiliated third parties, except (i) with the prior written consent of the Management Company, (ii) such information as a rating agency shall reasonably request in connection with its

rating of notes issued by a CLO or supplying credit estimates on any obligation included in the Portfolio, (iii) in connection with establishing trading or investment accounts or otherwise in connection with effecting transactions on behalf of the Management Company or any Client or Account for which the Management Company serves as portfolio manager or investment manager or in a similar capacity, (iv) as required by (A) Applicable Law or (B) the rules or regulations of any self-regulating organization, body or official having jurisdiction over the Staff and Services Provider or any of its Affiliates, (v) to its professional advisors (including, without limitation, legal, tax and accounting advisors), (vi) such information as shall have been publicly disclosed other than in known violation of this Agreement or shall have been obtained by the Staff and Services Provider on a non-confidential basis, (vii) such information as is necessary or appropriate to disclose so that the Staff and Services Provider may perform its duties hereunder, (viii) as expressly permitted in the final offering memorandum or any definitive transaction documents relating to any Client or Account, (ix) information relating to performance of the Portfolio as may be used by the Staff and Services Provider in the ordinary course of its business or (xx) such information as is routinely disclosed to the trustee, custodian or collateral administrator of any Client or Account in connection with such trustee's, custodian's or collateral administrator's performance of its obligations under the transaction documents related to such Client or Account. Notwithstanding the foregoing, it is agreed that the Staff and Services Provider may disclose without the consent of any Person (1) that it is serving as staff and services provider to the Management Company, (2) the nature, aggregate principal amount and overall performance of the Portfolio, (3) the amount of earnings on the Portfolio, (4) such other information about the Management Company, the Portfolio and the Clients or Accounts as is customarily disclosed by staff and services providers to management vehicles similar to the Management Company, and (5) the United States federal income tax treatment and United States federal income tax structure of the transactions contemplated by this Agreement and the related documents and all materials of any kind (including opinions and other tax analyses) that are provided to them relating to such United States federal income tax treatment and United States income tax structure. This authorization to disclose the U.S. tax treatment and tax structure does not permit disclosure of information identifying the Staff and Services Provider, the Clients or Accounts or any other party to the transactions contemplated by this Agreement (except to the extent such information is relevant to U.S. tax structure or tax treatment of such transactions).

ARTICLE VI

EXCULPATION AND INDEMNIFICATION

Section 6.01 Standard of Care. Except as otherwise expressly provided herein, each Covered Person shall discharge its duties under this Agreement with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. To the extent not inconsistent with the foregoing, each Covered Person shall follow its customary standards, policies and procedures in performing its duties hereunder. No Covered Person shall deal with the income or assets of the Management Company in such Covered Person's own interest or for its own account. Each Covered Person in its respective sole and absolute discretion may separately engage or invest in any other business ventures, including those that may be in competition with the Management Company, and the Management Company will not have any rights in or to such ventures or the income or profits derived therefrom.

Section 6.02 Exculpation. To the fullest extent permitted by law, no Covered Person will be liable to the Management Company, any Member, or any shareholder, partner or member thereof, for (i) any acts or omissions by such Covered Person arising out of or in connection with the conduct of the business of the Management Company or its General Partner, or any investment made or held by the Management Company or its General Partner, unless it is determined ultimately by a court of competent jurisdiction, in a final nonappealable judgment, to be the result of gross negligence or to constitute fraud or willful misconduct (as interpreted under the laws of the State of Delaware) (each, a “Disabling Conduct”) on the part of such Covered Person, (ii) any act or omission of any Investor, (iii) any mistake, gross negligence, misconduct or bad faith of any employee, broker, administrator or other agent or representative of such Covered Person, *provided* that such employee, broker, administrator or agent was selected, engaged or retained by or on behalf of such Covered Person with reasonable care, or (iv) any consequential (including loss of profit), indirect, special or punitive damages. To the extent that, at law or in equity, any Covered Person has duties (including fiduciary duties) and liabilities relating thereto to the Management Company or any Member, no Covered Person acting under this Agreement shall be liable to the Management Company or to any such Member for its good-faith reliance on the provisions of this Agreement. The exculpations set forth in this Section 6.02 shall exculpate any Covered Person regardless of such Covered Person’s sole, comparative, joint, concurrent, or subsequent negligence.

To the fullest extent permitted by law, no Covered Person shall have any personal liability to the Management Company or any Member solely by reason of any change in U.S. federal, state or local or foreign income tax laws, or in interpretations thereof, as they apply to the Management Company or the Members, whether the change occurs through legislative, judicial or administrative action.

Any Covered Person in its sole and absolute discretion may consult legal counsel, accountants or other advisers selected by it, and any act or omission taken, or made in good faith by such Person on behalf of the Management Company or in furtherance of the business of the Management Company in good-faith reliance on and in accordance with the advice of such counsel, accountants or other advisers shall be full justification for the act or omission, and to the fullest extent permitted by applicable law, no Covered Person shall be liable to the Management Company or any Member in so acting or omitting to act if such counsel, accountants or other advisers were selected, engaged or retained with reasonable care.

Section 6.03 Indemnification by the Management Company. The Management Company shall and hereby does, to the fullest extent permitted by applicable law, indemnify and hold harmless any Covered Person from and against any and all claims, causes of action (including, but not limited to, strict liability, negligence, statutory violation, regulatory violation, breach of contract, and all other torts and claims arising under common law), demands, liabilities, costs, expenses, damages, losses, suits, proceedings, judgments, assessments, actions and other liabilities, whether judicial, administrative, investigative or otherwise, of whatever nature, known or unknown, liquidated or unliquidated (“Claims”), that may accrue to or be incurred by any Covered Person, or in which any Covered Person may become involved, as a party or otherwise, or with which any Covered Person may be threatened, relating to or arising out of the investment or other activities of the Management Company or its General Partner, or activities undertaken in connection with the Management Company or its General Partner, or otherwise relating to or

arising out of this Agreement, including amounts paid in satisfaction of judgments, in compromise or as fines or penalties, and attorneys' fees and expenses incurred in connection with the preparation for or defense or disposition of any investigation, action, suit, arbitration or other proceeding (a "Proceeding"), whether civil or criminal (all of such Claims, amounts and expenses referred to therein are referred to collectively as "Damages"), except to the extent that it shall have been determined ultimately by a court of competent jurisdiction, in a final nonappealable judgment, that such Damages arose primarily from Disabling Conduct of such Covered Person. The termination of any Proceeding by settlement, judgment, order, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that any Damages relating to such settlement, judgment, order, conviction or plea of nolo contendere or its equivalent or otherwise relating to such Proceeding arose primarily from Disabling Conduct of any Covered Persons. Any Covered Person shall be indemnified under the terms of this Section 6.03 regardless of such Covered Person's sole, comparative, joint, concurrent, or subsequent negligence.

Expenses (including attorneys' fees) incurred by a Covered Person in defense or settlement of any Claim that may be subject to a right of indemnification hereunder shall be advanced by the Management Company prior to the final disposition thereof upon receipt of a written undertaking by or on behalf of the Covered Person to repay the amount advanced to the extent that it shall be determined ultimately by a court of competent jurisdiction that the Covered Person is not entitled to be indemnified hereunder. The right of any Covered Persons to the indemnification provided herein shall be cumulative of, and in addition to, any and all rights to which the Covered Person may otherwise be entitled by contract or as a matter of law or equity and shall be extended to the Covered Person's successors, assigns and legal representatives. Any judgments against the Management Company and/or any Covered Persons in respect of which such Covered Person is entitled to indemnification shall first be satisfied from the assets of the Management Company, including Drawdowns, before such Covered Person is responsible therefor.

Notwithstanding any provision of this Agreement to the contrary, the provisions of this Section 6.03 shall not be construed so as to provide for the indemnification of any Covered Person for any liability (including liability under Federal securities laws which, under certain circumstances, impose liability even on persons that act in good faith), to the extent (but only to the extent) that such indemnification would be in violation of applicable law, but shall be construed so as to effectuate the provisions of this Section 6.03 to the fullest extent permitted by law.

Section 6.04 Other Sources of Recovery etc. The indemnification rights set forth in Section 6.03 are in addition to, and shall not exclude, limit or otherwise adversely affect, any other indemnification or similar rights to which any Covered Person may be entitled. If and to the extent that other sources of recovery (including proceeds of any applicable policies of insurance or indemnification from any Person in which any of the Clients or Accounts has an investment) are available to any Covered Person, such Covered Person shall use reasonable efforts to obtain recovery from such other sources before the Company shall be required to make any payment in respect of its indemnification obligations hereunder; *provided* that, if such other recovery is not available without delay, the Covered Person shall be entitled to such payment by the Management Company and the Management Company shall be entitled to reimbursement out of such other recovery when and if obtained.

Section 6.05 Rights of Heirs, Successors and Assigns. The indemnification rights provided by Section 6.03 shall inure to the benefit of the heirs, executors, administrators, successors and assigns of each Covered Person.

Section 6.06 Reliance. A Covered Person shall incur no liability to the Management Company or any Member in acting upon any signature or writing reasonably believed by him, her or it to be genuine, and may rely in good faith on a certificate signed by an officer of any Person in order to ascertain any fact with respect to such Person or within such Person's knowledge. Each Covered Person may act directly or through his, her or its agents or attorneys.

ARTICLE VII

TERMINATION

Section 7.01 Termination. Either Party may terminate this Agreement at any time upon at least thirty (30) days' written notice to the other.

ARTICLE VIII

MISCELLANEOUS

Section 8.01 Amendments. This Agreement may not be amended or modified except by an instrument in writing signed by each Party.

Section 8.02 Assignment and Delegation.

(a) Neither Party may assign, pledge, grant or otherwise encumber or transfer all or any part of its rights or responsibilities under this Agreement, in whole or in part, except (i) as provided in clauses (b) and (c) of this Section 8.02, without the prior written consent of the other Party and (ii) in accordance with Applicable Law.

(b) Except as otherwise provided in this Section 8.02, the Staff and Services Provider may not assign its rights or responsibilities under this Agreement unless (i) the Management Company consents in writing thereto and (ii) such assignment is made in accordance with Applicable Law.

(c) The Staff and Services Provider may, without satisfying any of the conditions of Section 8.02(a) other than clause (ii) thereof, (1) assign any of its rights or obligations under this Agreement to an Affiliate; *provided* that such Affiliate (i) has demonstrated ability, whether as an entity or by its principals and employees, to professionally and competently perform duties similar to those imposed upon the Staff and Services Provider pursuant to this Agreement and (ii) has the legal right and capacity to act as Staff and Services Provider under this Agreement, or (2) enter into (or have its parent enter into) any consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all of its assets to, another entity; *provided* that, at the time of such consolidation, merger, amalgamation or transfer the resulting, surviving or transferee entity assumes all the obligations of the Staff and Services Provider under this Agreement generally (whether by operation of law or by contract) and the other entity is a continuation of the Staff and Services Provider in another corporate or similar form and has

substantially the same staff; *provided further* that the Staff and Services Provider shall deliver ten (10) Business Days' prior notice to the Management Company of any assignment or combination made pursuant to this sentence. Upon the execution and delivery of any such assignment by the assignee, the Staff and Services Provider will be released from further obligations pursuant to this Agreement except to the extent expressly provided herein.

Section 8.03 Non-Recourse; Non-Petition.

(a) The Staff and Services Provider agrees that the payment of all amounts to which it is entitled pursuant to this Agreement shall be payable by the Management Company only to the extent of assets held in the Portfolio.

(b) Notwithstanding anything to the contrary contained herein, the liability of the Management Company to the Staff and Services Provider hereunder is limited in recourse to the Portfolio, and if the proceeds of the Portfolio following the liquidation thereof are insufficient to meet the obligations of the Management Company hereunder in full, the Management Company shall have no further liability in respect of any such outstanding obligations, and such obligations and all claims of the Staff and Services Provider or any other Person against the Management Company hereunder shall thereupon extinguish and not thereafter revive. The Staff and Services Provider accepts that the obligations of the Management Company hereunder are the corporate obligations of the Management Company and are not the obligations of any employee, member, officer, director or administrator of the Management Company and no action may be taken against any such Person in relation to the obligations of the Management Company hereunder.

(c) Notwithstanding anything to the contrary contained herein, any Staff and Services Provider agrees not to institute against, or join any other Person in instituting against, the Management Company any bankruptcy, reorganization, arrangement, insolvency, moratorium or liquidation proceedings, or other proceedings under United States federal or state bankruptcy laws, or similar laws until at least one year and one day (or, if longer, the then applicable preference period plus one day) after the payment in full all amounts payable in respect of any Indebtedness incurred to finance any portion of the Portfolio; *provided* that nothing in this provision shall preclude, or be deemed to stop, the Staff and Services Provider from taking any action prior to the expiration of the aforementioned one year and one day period (or, if longer, the applicable preference period then in effect plus one day) in (i) any case or proceeding voluntarily filed or commenced by the Management Company, or (ii) any involuntary insolvency proceeding filed or commenced against the Management Company by a Person other than the Staff and Services Provider.

(d) The Management Company hereby acknowledges and agrees that the Staff and Services Provider's obligations hereunder shall be solely the corporate obligations of the Staff and Services Provider, and are not the obligations of any employee, member, officer, director or administrator of the Staff and Services Provider and no action may be taken against any such Person in relation to the obligations of the Staff and Services Provider hereunder.

(e) The provisions of this Section 8.03 shall survive termination of this Agreement for any reason whatsoever.

Section 8.04 Governing Law.

(a) This Agreement shall be governed by, and construed in accordance with, the laws of the State of Texas. The Parties unconditionally and irrevocably consent to the exclusive jurisdiction of the courts located in the State of Texas and waive any objection with respect thereto, for the purpose of any action, suit or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

(b) The Parties irrevocably agree for the benefit of each other that the courts of the State of Texas and the United States District Court located in the Northern District of Texas in Dallas are to have exclusive jurisdiction to settle any disputes (whether contractual or non-contractual) which may arise out of or in connection with this Agreement and that accordingly any action arising out of or in connection therewith (together referred to as "Proceedings") may be brought in such courts. The Parties irrevocably submit to the jurisdiction of such courts and waive any objection which they may have now or hereafter to the laying of the venue of any Proceedings in any such court and any claim that any Proceedings have been brought in an inconvenient forum and further irrevocably agree that a judgment in any Proceedings brought in such courts shall be conclusive and binding upon the Parties and may be enforced in the courts of any other jurisdiction.

Section 8.05 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT. EACH PARTY HERETO ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR ITS ENTERING INTO THIS AGREEMENT.

Section 8.06 Severability. The provisions of this Agreement are independent of and severable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties.

Section 8.07 No Waiver. The performance of any condition or obligation imposed upon any Party may be waived only upon the written consent of the Parties. Such waiver shall be limited to the terms thereof and shall not constitute a waiver of any other condition or obligation of the other Party. Any failure by any Party to enforce any provision shall not constitute a waiver of that or any other provision or this Agreement.

Section 8.08 Counterparts. This Agreement may be executed in any number of counterparts by facsimile or other written or electronic form of communication, each of which shall be deemed to be an original as against any Party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the Parties reflected hereon as the signatories.

Section 8.09 Third Party Beneficiaries. This Agreement is for the sole benefit of the Parties hereto and their permitted assigns and nothing herein express or implied shall give or be construed to give to any Person, other than the Parties hereto and such permitted assigns, any legal or equitable rights hereunder. For avoidance of doubt, this Agreement is not for the benefit or and is not enforceable by any Shared Employee, Client or Account or any investor (directly or indirectly) in the Management Company.

Section 8.10 No Partnership or Joint Venture. Nothing set forth in this Agreement shall constitute, or be construed to create, an employment relationship, a partnership or a joint venture between the Parties. Except as expressly provided herein or in any other written agreement between the Parties, no Party has any authority, express or implied, to bind or to incur liabilities on behalf of, or in the name of, any other Party.

Section 8.11 Independent Contractor. Notwithstanding anything to the contrary, the Staff and Services Provider shall be deemed to be an independent contractor and, except as expressly provided or authorized herein, shall have no authority to act for or represent the Management Company or any Client or Account in which the Management Company acts as portfolio manager or investment manager or in a similar capacity in any manner or otherwise be deemed an agent of the Management Company or any Client or Account in which the Management Company acts as portfolio manager or investment manager or in a similar capacity.

Section 8.12 Written Disclosure Statement. The Management Company acknowledges receipt of Part 2 of the Staff and Services Provider's Form ADV, as required by Rule 204-3 under the Advisers Act, on or before the date of execution of this Agreement.

Section 8.13 Headings. The descriptive headings contained in this Agreement are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 8.14 Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior agreements and undertakings, both written and oral, between the Parties with respect to such subject matter.

Section 8.15 Notices. Any notice or demand to any Party to be given, made or served for any purposes under this Agreement shall be given, made or served by sending the same by overnight mail or email transmission or by delivering it by hand as follows:

- (a) If to the Management Company:

NexPoint Advisors, L.P.
200 Crescent Court
Suite 700
Dallas, TX 75201

(b) If to the Staff and Services Provider:

Highland Capital Management, L.P.
300 Crescent Court
Suite 700
Dallas, TX 75201

or to such other address or email address as shall have been notified to the other Parties.

[The remainder of this page intentionally left blank.]

~~Case 21-03004-sj Doc 43 Filed 02/17/22 Entered 02/17/22 16:45:55 Page 420 of 432~~

IN WITNESS WHEREOF, each Party has caused this Agreement to be executed as of the date hereof by its duly authorized representative.

NEXPOINT ADVISORS, L.P.


By: NexPoint Advisors GP, LLC, its
General Partner

By: 

Name: Frank Waterhouse
Title: Treasurer

**HIGHLAND CAPITAL
MANAGEMENT, L.P.**

By: Strand Advisors, Inc., its General
Partner

By: 

Name: Frank Waterhouse
Title: Treasurer

Rukavina, Davor

From: James Seery <jpseeryjr@gmail.com>
Sent: Thursday, September 17, 2020 4:17 PM
To: DC Sauter
Cc: Gregory V. Demo
Subject: Re: Acis Settlement

DC

I believe your concerns regarding the release are misplaced as it does not bind entities that HCMLP does not control. Greg can walk you through the language, but I do not believe it requires adjustment nor does it create any liability. To the contrary, it reduces liability.

With regard to the HCMLP employee prohibitions, no employee whether legal or non-legal can work on any matter that is inimical to the interests of HCMLP. I, as CEO, and the Independent Board will make the determination as to whether an action violates the prohibition, and a breach of the prohibition will lead to termination for cause. I believe that most of the employees have been informed of this requirement and are following the directive.

With regard to transactional matters, HCMLP employees will continue to work with you on those issues that do not run afoul of the prohibition above. If there is a particular matter where you are taking a potentially adversarial action vis a vis HCMLP, please let me know what it is. We can then consider whether a customized operating protocol for that issue is needed or whether you will simply be on your own. I will make the determination with the advice of counsel. We do not believe the Texas rules of professional responsibility apply in this situation.

Please let me know what matter you are considering with respect to the immediately preceding paragraph, and we will consider how to best address your concerns.

Best. Jim

Jim Seery
631-804-2049
jpseeryjr@gmail.com

From: DC Sauter <DSauter@NexPointadvisors.com>
Date: Thursday, September 17, 2020 at 4:56 PM
To: Jim Seery <jpseeryjr@gmail.com>
Cc: Greg Demo <GDemo@pszjlaw.com>
Subject: RE: Acis Settlement

Jim/Greg, follow up on my email below. I have a few items that have been placed on my plate, and I really need to understand who I can speak with and the extent to which they are permitted to share information with me.

D.C. SAUTER

NEXPOINT

O: 972.628.4117 | C: 469.877.6440

From: DC Sauter
Sent: Tuesday, September 15, 2020 8:55 AM
To: 'James Seery' <jpseeryjr@gmail.com>
Cc: Gregory V. Demo <GDemo@pszjlaw.com>
Subject: RE: Acis Settlement

My apologies for copying Isaac. I was under the mistaken impression that he would have assisted in the settlement.

In my view, the requested clarification is beneficial to Strand, HCMLP, and the other "HCMLP Entities." The documents purport to release ACIS from claims on behalf of, among others, any entity that is "managed" by HCMLP and "respective current advisors, trustees, directors, officers, managers, members, partners, current or former employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns" of any "HCMLP Entity." Those "HCMLP Entities" lack the authority to bind a whole host of parties in that laundry list, which could result in claims against HCMLP, Strand, and the other "HCMLP Entities" by both the "ACIS Released Parties," who will claim they didn't receive the benefit of the bargain, and the parties on whose behalf the "HCMLP Parties" purported to release claims who didn't consent to the release.

Additionally, I'd like to visit with you all regarding the board's position that prohibits certain HCMLP personnel from working on certain matters.

First, I am unclear whether the prohibition applies to only HCMLP legal personnel or whether it applies to all HCMLP employees. Please clarify.

Second, as you may know, virtually all of these matters are falling into my lap, and in most cases I lack any knowledge about them. It would help me tremendously if current HCMLP employees, and particularly the legal personnel, could provide me with transactional background to assist in the transition of the matter. While I understand the board's concern with Judge Jernigan's order, I don't believe that the Texas Disciplinary Rules of Professional Conduct mandate or even permit an attorney licensed in the State of Texas to refuse to cooperate with a former client in the transfer of a matter to a new attorney. Rule 1.15(d) states that "[u]pon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payments of fee that has not been earned." The comments to that rule provide additional clarity: "In every instance of withdrawal and even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client." T.D.R.P.C. Rule 1.15, comment 9. Proper steps may include providing information to new counsel or even continuing to represent the client for a limited time to meet impending deadlines. *Microsoft Corp. v. Commonwealth Sci. & Indus. Research Org.*, 2007 U.S. Dist. LEXIS 91550 *23-24 fn. 11 (E.D. Tex. Dec. 13, 2007). Even if the board insists that the HCMLP legal personnel cannot continue to represent others in non-HCMLP matters or matters adverse to HCMLP (irrespective of any conflict of interest analysis of whether those attorneys may continue to represent HCMLP in those matters), the ethical rules require that the attorneys provide assistance in transferring those matters to me or others.

Finally, I routinely handle, and am routinely asked to handle, legal matters that relate to real estate for entities owned or controlled by HCMLP (Park West, the Arizona assets, the Maple Ave. property, to name a few). I am not an HCMLP employee, and it's my understanding that NexPoint Advisors, L.P. is not compensated for the time I spend on HCMLP matters. I'm not suggesting that this arrangement should change, but it feels from my perspective that the board's position is only working in one direction. In other words, if I understand the board's position correctly, I can work on both NexPoint and HCMLP matters, but the HCMLP legal employees may only work on HCMLP-related matters. It has also put a significant amount of additional work on my plate. I would like to understand two things. First, what is the scope of my authority in these matters, and what is the proper protocol vis-à-vis you, DSI, and the board? I have tried to take the conservative approach in keeping you all informed and asking for consent or approval where I thought it

appropriate. I assume this is how you'd like to continue to handle things, but I would like confirmation of that. Second, I have heard that you all were working to transfer a couple of the legal personnel (perhaps Thedford and Post) to HCMFA so they could assist with the work load (particularly in the areas where I don't have a significant amount of experience). I'd like to know where that stands and when relief can be expected.

I'm available most of today and tomorrow to discuss.

D.C. SAUTER

NEXPOINT

O: 972.628.4117 | C: 469.877.6440

From: James Seery <jseeryjr@gmail.com>
Sent: Tuesday, September 15, 2020 7:01 AM
To: DC Sauter <DSauter@NexPointadvisors.com>
Cc: Gregory V. Demo <GDemo@pszjlaw.com>; Isaac Leventon <ILeventon@HighlandCapital.com>
Subject: Re: Acis Settlement

DC. We will discuss and revert to you. Neither Isaac nor anyone else at HCMLP is permitted to work on any issues related to the settlement and release other than as directed by me.

Thanks

Sent from my iPad

On Sep 14, 2020, at 7:08 PM, DC Sauter <DSauter@nexpointadvisors.com> wrote:

Greg,

I've been asked to review the attached release on behalf of HCMFA and the closed-end funds. I'm concerned that the language below creates an ambiguity as to whether the closed-end funds and HCMFA have released claims against the ACIS parties:

1. The release by Strand, which also serves as the general partner of HCMFA; and
2. The release by each "HCMLP Entity" of its "respective current advisors, trustees, directors, officers, managers, members, partners, current or former employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns."

We would like the final sentence in paragraph 1.a. of the Release to be revised to specifically identify HCMFA and the closed-end funds as parties not covered by the release. Please let me know if you'd like to discuss in more detail.

D.C. SAUTER | GENERAL COUNSEL, REAL ESTATE

<image001.jpg>

300 Crescent Court | Suite 700 | Dallas, Texas 75201
O: 972.628.4117 | C: 469.877.6440 | F: 972.628.4147
dsauter@nexpointadvisors.com | www.NexPointGroup.com

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PRIVILEGE WARNING: The sender or recipient of this message is a member of the legal department at Highland Capital Management. This message and any attachments hereto may constitute attorney work product or be protected by the attorney-client privilege. Do not disclose this message or any attachments hereto without prior consent of a member of the legal department at Highland Capital Management.

<Acis - Release (EXECUTION VERSION).pdf>



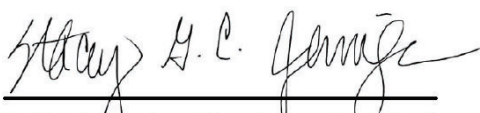
CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed January 11, 2021


United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,¹

Debtor.

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

vs.

JAMES D. DONDERO,

Defendant.

§
§ Chapter 11
§
§ Case No. 19-34054-sgj11
§
§
§
§ Adversary Proceeding No.
§
§ No. 20-03190-sgj
§
§
§
§

**ORDER GRANTING DEBTOR'S MOTION FOR A PRELIMINARY INJUNCTION
AGAINST JAMES DONDERO**

This matter having come before the Court on *Plaintiff Highland Capital Management,*

¹ The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

L.P.’s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero [Adv. Pro. Docket No. 2] (the “Motion”), filed by Highland Capital Management, L.P., the debtor and debtor-in-possession (the “Debtor”) in the above-captioned chapter 11 case (the “Bankruptcy Case”), and the plaintiff in the above-captioned adversary proceeding (the “Adversary Proceeding”); and this Court having considered (a) the Motion, (b) *Plaintiff Highland Capital Management, L.P.’s Verified Original Complaint for Injunctive Relief* [Adv. Pro. Docket No. 1] (the “Complaint”), (c) the arguments and law cited in the *Debtor’s Amended Memorandum of Law in Support of its Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero* [Adv. Pro. Docket No. 3] (the “Memorandum of Law,” and together with the Motion and Complaint, the “Debtor’s Papers”), (d) *James Dondero’s Response in Opposition to Debtor’s Motion for a Preliminary Injunction* [Adv. Pro. Docket No. 52] (the “Opposition”) filed by James Dondero, (e) the testimonial and documentary evidence admitted into evidence during the hearing held on January 8, 2021 (the “Hearing”), including assessing the credibility of Mr. James Dondero, (f) the arguments made during the Hearing, and (g) all prior proceedings relating to the Motion, including the December 10, 2020 hearing on the *Debtor’s Motion for a Temporary Restraining Order and Preliminary Injunction against James Dondero* [Adv. Pro. Docket No. 6] (the “TRO Hearing”); and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that injunctive relief is warranted under sections 105(a) and 362(a) of the Bankruptcy Code and that the relief requested in the Motion is in the best interests of the Debtor’s estate, its creditors, and other parties-in-interest;

and this Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Debtor's Papers, and the evidence submitted in support thereof, establish good cause for the relief granted herein, and that (1) such relief is necessary to avoid immediate and irreparable harm to the Debtor's estate and reorganization process; (2) the Debtor is likely to succeed on the merits of its underlying claim for injunctive relief; (3) the balance of the equities tip in the Debtor's favor; and (4) such relief serves the public interest; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor and for the reasons set forth in the record on this Motion, it is **HEREBY ORDERED THAT:**

1. The Motion is **GRANTED** as set forth herein.
2. James Dondero is preliminarily enjoined and restrained from (a) communicating (whether orally, in writing, or otherwise), directly or indirectly, with any Board member unless Mr. Dondero's counsel and counsel for the Debtor are included in any such communication; (b) making any express or implied threats of any nature against the Debtor or any of its directors, officers, employees, professionals, or agents, in whatever capacity they are acting; (c) communicating with any of the Debtor's employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero; (d) interfering with or otherwise impeding, directly or indirectly, the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned, controlled or managed by the Debtor, and the pursuit of the Plan or any

alternative to the Plan; and (e) otherwise violating section 362(a) of the Bankruptcy Code (collectively, the “Prohibited Conduct”).²

3. James Dondero is further preliminarily enjoined and restrained from causing, encouraging, or conspiring with (a) any entity owned or controlled by him, and/or (b) any person or entity acting with him or on his behalf, to, directly or indirectly, engage in any Prohibited Conduct.

4. James Dondero is further preliminarily enjoined and restrained from communicating (in person, telephonically, by e-mail, text message or otherwise) with Scott Ellington and/or Isaac Leventon, unless otherwise ordered by the Court.

5. James Dondero is further preliminarily enjoined and restrained from physically entering, or virtually entering through the Debtor’s computer, email, or information systems, the Debtor’s offices located at Crescent Court in Dallas, Texas, or any other offices or facilities owned or leased by the Debtor, regardless of any agreements, subleases, or otherwise, held by the Debtor’s affiliates or entities owned or controlled by Mr. Dondero, without the prior written permission of Debtor’s counsel made to Mr. Dondero’s counsel. If Mr. Dondero enters the Debtor’s office or other facilities or systems without such permission, such entrance will constitute trespass.

6. James Dondero is ordered to attend all future hearings in this Bankruptcy Case by Webex (or whatever other video platform is utilized by the Court), unless otherwise ordered by the Court.

7. This Order shall remain in effect until the date that any plan of reorganization or liquidation resolving the Debtor’s case becomes effective, unless otherwise ordered by the Court.

² For the avoidance of doubt, this Order does not enjoin or restrain Mr. Dondero from (1) seeking judicial relief upon proper notice or from objecting to any motion filed in this Bankruptcy Case, or (2) communicating with the committee of unsecured creditors (the “UCC”) and its professionals regarding a pot plan.

EXHIBIT 219

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re:) **Case No. 19-34054-sgj-11**
) Chapter 11
)
HIGHLAND CAPITAL) Dallas, Texas
MANAGEMENT, L.P.,) Monday, January 10, 2022
) 9:30 a.m. Docket
Debtor.)
)
HIGHLAND CAPITAL) **Adversary Proceeding 21-3004-sgj**
MANAGEMENT, L.P.,)
)
Plaintiff,)
)
v.) DEFENDANT'S SECOND MOTION TO
) AMEND ANSWER [82]
HIGHLAND CAPITAL MANAGEMENT)
FUND ADVISORS, L.P.,)
)
Defendant.)
)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

WEBEX APPEARANCES:

For the Debtor-Plaintiff: John A. Morris
PACHULSKI STANG ZIEHL & JONES, LLP
780 Third Avenue, 34th Floor
New York, NY 10017-2024
(212) 561-7700

For the Defendant: Davor Rukavina
Julian Preston Vasek
MUNSCH HARDT KOPF & HARR, P.C.
500 N. Akard Street, Suite 3800
Dallas, TX 75201-6659
(214) 855-7587

Recorded by: Michael F. Edmond, Sr.
UNITED STATES BANKRUPTCY COURT
1100 Commerce Street, 12th Floor
Dallas, TX 75242
(214) 753-2062

1 Transcribed by: Kathy Rehling
2 311 Paradise Cove
3 Shady Shores, TX 76208
4 (972) 786-3063
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23 Proceedings recorded by electronic sound recording;
24 transcript produced by transcription service.
25

1 DALLAS, TEXAS - JANUARY 10, 2022 - 10:19 A.M.

2 THE COURT: I will now take appearances in the
3 Highland Capital Management versus HCMFA adversary. This is
4 Adversary 21-3004. We have Defendant's Second Motion to Amend
5 Answer. Who do we have appearing for the Defendant?

6 MR. RUKAVINA: Your Honor, good morning. Davor
7 Rukavina and Julian Vasek for the Defendant.

8 THE COURT: Good morning. Who do we have appearing
9 for Highland?

10 MR. MORRIS: Good morning, Your Honor. This is John
11 Morris from Pachulski Stang Ziehl & Jones for Highland
12 Capital, for the Reorganized Debtor Highland Capital
13 Management, LP.

14 THE COURT: All right. Thank you. I know we have
15 many observers. Is there anyone else who wanted to appear?

16 (No response.)

17 THE COURT: All right. Well, we had lots of paper
18 filed on this matter. Mr. Rukavina, how did you want to
19 proceed?

20 MR. RUKAVINA: Your Honor, I'd like to give an
21 opening. Well, I'd like to give my argumentation. There is a
22 disagreement. I understand Mr. Morris would like to call D.C.
23 Sauter as a witness. It's my position that that's not
24 possible under the Local Rules. But perhaps the Court wants
25 to rule on that matter first, because that would then affect

1 the manner of presentation.

2 THE COURT: Okay. So you say it's not allowed under
3 Local Rules for the Debtor to call a witness? What Local Rule
4 do you mean?

5 MR. RUKAVINA: Yes, Your Honor. I'm referring to
6 the Local Rule 7007(g), which talks about that a party who
7 relies on exhibits, evidence, et cetera, does so through an
8 appendix. In fact, the Debtor filed its appendix. I filed my
9 appendix.

10 And I think certainly the Court has discretion, but I
11 think in twenty years of practicing before this Court, unless
12 it's a sanctions issue or unless it's a preliminary injunction
13 issue, it's been my understanding that motions are always
14 adjudicated based on the appendices.

15 And I believe that Your Honor has indicated or even stated
16 that the District Court rules should applies to this
17 proceeding, and the District Court rules, I think, are even
18 clearer, because they provide that there is not even a hearing
19 on the motion. But, and they again require that any evidence
20 in support or opposition to a motion be by a declaration or by
21 deposition transcripts, again, in an appendix.

22 So I really have nothing more to add than that. It's just
23 a matter of Local Rules. Mr. Sauter is available should the
24 Court require him to be cross-examined. And I'll -- I'll just
25 rely on Rule 7007(g).

1 MR. MORRIS: If I may, Your Honor?

2 THE COURT: Yes. I'm pulling it up, since I don't
3 have every Local Rule memorized. So, appendix requirement.
4 Isn't this just a rule whenever you have -- do an appendix,
5 here are the requirements? I don't know. What did you --

6 MR. RUKAVINA: Well, Your Honor, --

7 THE COURT: Go ahead.

8 MR. RUKAVINA: It says a party who relies on
9 documentary or nondocumentary evidence to support or oppose a
10 motion shall include such evidence in an appendix. I've
11 always taken that to mean that -- we don't have many hearings
12 with live testimony, with cross-examination, on pure motion
13 practice, especially procedural motion practice.

14 But I don't have a case for you. I don't have, you know,
15 this isn't -- this isn't a U.S. Supreme Court matter. This is
16 just a matter of local practice.

17 MR. MORRIS: May I be heard, Your Honor?

18 THE COURT: Okay. Mr. Morris, go ahead.

19 MR. MORRIS: Just briefly. It's exactly why I raised
20 this issue last week. I raised it with Mr. Rukavina. He told
21 me his position. He's never given me any authority that says
22 I can't do this.

23 We wrote to the Court. We copied him. The Court told the
24 parties last Thursday that it's the Court's practice to allow
25 litigants to cross-examine witnesses who put forth

1 declarations. Mr. Sauter has put forth a substantive
2 declaration. This is not an attorney's declaration that
3 attaches documents. It's testimony. And that testimony is
4 going to be put in the record to support a motion, and
5 Highland respectfully requests the opportunity to cross-
6 examine Mr. Sauter on his statements.

7 THE COURT: Okay. I remember the question coming to
8 me through the courtroom deputy last week, and so I understand
9 she communicated an answer. This should be no surprise. I
10 mean, we generally allow the opportunity for cross-examination
11 wherever there's a declarant submitting evidence. And, I
12 mean, I see the rule you're talking about, Mr. Rukavina, but I
13 don't think there should have been any doubt because of the
14 communication through my courtroom deputy that I was going to
15 allow cross-examination for any declarant.

16 And, frankly, I mean, this is a pretty important motion.
17 You know, for crying out loud, it was an 800-page-plus
18 appendix, I think, with all the documentation. I think that
19 was yours, Mr. Rukavina. So the ruling is we will allow
20 cross-examination of Mr. Sauter.

21 All right. Mr. Rukavina?

22 MR. RUKAVINA: Then, Your Honor, then I'll propose --
23 I propose that I just give you my argumentation based on Mr.
24 Sauter's declaration as his direct testimony, and then, of
25 course, Mr. Morris will cross-examine him. I don't know that

1 we need an opening, evidence, then closing.

2 MR. MORRIS: I'd like the opportunity to make a brief
3 opening, Your Honor.

4 THE COURT: Okay. I'll --

5 MR. MORRIS: If Mr. Rukavina doesn't want to do that,
6 that's fine.

7 THE COURT: I'll allow opening statements. Again, I
8 think this is a pretty big deal. So I'll allow it if you want
9 to make an opening statement.

10 MR. RUKAVINA: Okay, Your Honor. Thank you.

11 OPENING STATEMENT ON BEHALF OF THE DEFENDANT

12 MR. RUKAVINA: So, as the Court is certainly aware,
13 this is our second motion to amend our answer. The amended
14 answer would more specifically and expressly deny that Mr.
15 Waterhouse signed the two promissory notes at issue in this
16 lawsuit.

17 I don't think that we've had a contested hearing in this
18 adversary, Your Honor, although it is one of the note cases.
19 So I think it would help the Court just to give you a very
20 quick summary of what the issues in this adversary are.

21 We, the Defendant, deny that they are -- that there are
22 valid promissory notes here. This isn't an issue where we
23 have the potential forgivable promissory notes. This isn't an
24 issue where we have other defenses like in the other cases.
25 Here, our defense -- really, our only defense -- goes to the

1 core of whether there are enforceable contractual promises
2 here.

3 In May of 2019, it is true that the Debtor transferred
4 \$7.4 million to HCMFA. That is not disputed. What is
5 disputed is whether that transfer was for compensation to
6 HCMFA or whether it was to be a loan to be repaid.

7 That defense has already been pled. We're not here today
8 to try that defense. We're not here to prove that defense.
9 But it is important context because how and why Mr. Waterhouse
10 would have or did sign these promissory notes goes to the core
11 of this mistake.

12 What the evidence is is that Mr. Dondero told Mr.
13 Waterhouse to transfer \$7.4 million. Mr. Dondero, in his
14 mind, was doing that because the Debtor caused a misstate
15 which cost \$7.4 million of liability for HCMFA. Mr. Dondero
16 never told Mr. Waterhouse to paper it up as a loan. Mr.
17 Waterhouse doesn't remember being told to paper it up as a
18 loan. Mr. Waterhouse told his team to transfer the funds.
19 That team then implemented its standard operating procedure,
20 which is that when it sees intercompany transfers going back
21 and forth it papers them as loans.

22 Mr. Waterhouse confirmed that only Mr. Dondero would have
23 had authority to create this loan.

24 In any event, Mr. Vasek, if you'll please share the
25 promissory note with the Court, one of them, Your Honor will

1 see what these notes look like. And, again, I'm not here
2 today to try the underlying merits, but it's important to see
3 that everything regarding these notes is a mistake, really.

4 So here's one of these two promissory notes. And
5 obviously, HCMFA is defined as the maker here, but Mr. Vasek,
6 if you'll scroll to the second page, you'll see, Your Honor,
7 that the note is signed by Frank Waterhouse. And he's not
8 signing it as a CFO. He's not signing it as a treasurer. And
9 I know that Your Honor has extensive experience, both as a
10 judge and in private practice, with promissory notes and
11 corporate obligations. The UCC is very clear. When someone
12 signs a note like this, he is signing it in order to be
13 jointly and severally liable with the maker.

14 So immediately here, when this case was filed, we saw
15 something that you don't have in the other cases, you have
16 something that's very strange, you have maker Frank
17 Waterhouse. Clearly, it was not the intent of the parties
18 that Frank Waterhouse would be personally liable for \$7.4
19 million. But it just shows how the mistakes kept happening.

20 So, Mr. Vasek, if you'll please share with the Court my
21 request for production.

22 Your Honor, what Mr. Vasek is going to show you is my May
23 28, 2021 request for production. It's my second request for
24 production.

25 And if you'll scroll down, Mr. Vasek, I believe it's

1 Request #2.

2 Okay. Your Honor -- oh, I'm sorry, it's Request #9. Your
3 Honor can see I'm requesting all Microsoft Word copies of the
4 notes, including metadata.

5 So, again, the manner in which the note is signed
6 certainly -- certainly raised our eyebrows. It certainly made
7 us think. And we did what we are supposed to do. We
8 requested through discovery the originals and metadata so that
9 we can see what happened. Because Your Honor will see, and
10 I'm sure Mr. Sauter will testify about it, by this time Mr.
11 Sauter had asked Mr. Waterhouse, what are these notes? Did
12 you sign these notes? And Mr. Waterhouse told Mr. Sauter,
13 well, it looks like my signature so I must have signed them.
14 So, so as of this time in May, we still did not have any real
15 reason to say that Mr. Waterhouse didn't sign the notes except
16 we had a reasonable suspicion based on the way that the notes
17 are signed that something happened here.

18 Mr. Vasek, if you'll please share the Debtor's response to
19 the RFP. And if you'll scroll down to the answer to RFP #9.

20 So, Your Honor, this is in July now. I'm sorry, this is
21 in June. And the Debtor makes a limited objection to Request
22 #9. But the Debtor basically says it'll conduct a reasonable
23 search for and produce documents responsive to this request.

24 You can pull that down.

25 So, so I did not file a motion to compel. There was no

1 need to file a motion to compel. The Debtor's objection based
2 on metadata was limited. And I expected that the Debtor would
3 produce the originals of the notes.

4 It didn't. It didn't. It did, in late July, produce some
5 Word documents that had all metadata scrubbed. It was not
6 obvious what those were. The Debtor is now saying that those
7 were the originals of the notes. But that was not my
8 understanding. There were not -- there was no metadata. And
9 it wasn't the Debtor's understanding. And I'll show you why
10 the Debtor also believed that it did not produce the originals
11 of the notes.

12 If you'll pull up the October 15th email, Mr. Vasek.

13 So, remember, Judge, we just stopped in late June when the
14 Debtor answers my RFPs. Here we are now in mid-October.
15 We're about to go into two weeks of depositions. Your Honor
16 knows who Ms. Deitsch-Perez is. She's my co-counsel.

17 Scroll down a little bit, Julian, please, to my -- to Ms.
18 Deitsch-Perez's email. So, stop right there.

19 So, Judge, this is a long email string. The Court can
20 certainly look over it if it needs to. The only relevant
21 portions are these top two emails, where Ms. Perez says, John,
22 please have Debtor produce the Word versions of all the notes
23 at issue. We have searched and it does not appear that they
24 were produced. Can you do that today? Thanks.

25 And if you'll scroll up, Mr. Vasek, Mr. Morris writes

1 back, I'll look into it, Deborah.

2 You can -- you can close this document.

3 And, again, this is important because we're about to
4 depose Mr. Waterhouse. Ms. Perez, Deitsch-Perez and I, we're
5 waiting for the notes. We're waiting for the metadata. I'm
6 starting to think, well, they can't find the notes, there are
7 no notes. But we go forward.

8 And if you'll pull up the next -- the transcript, Mr.
9 Vasek.

10 So now, Your Honor, we are on October the 19th, 2021. Now
11 we are deposing Mr. Waterhouse. Mr. Waterhouse, recall, is
12 the person that purportedly signed these notes. Mr.
13 Waterhouse is the key witness. Only he and Mr. Dondero know
14 what was said. And Ms. Deitsch-Perez, you can see here, she
15 asks on the record, John, I also asked you for the Word
16 versions of these notes so we can look at the properties and
17 you have not provided them. Are you intending to? Mr. Morris
18 answers, No.

19 So this is October 19th now. This is during the
20 Waterhouse deposition.

21 You can close this document, Mr. Vasek, and pull up the
22 October 23rd email.

23 Now, after this, after this deposition, Mr. Morris and I
24 talk and we continue to negotiate. And ultimately Mr. Morris
25 and I reach an agreement. Mr. Morris wanted certain documents

1 of my clients that I'm sure he'll go through today. They're
2 what we, I guess, call Rule 15(c). Not Civil Practice Rules,
3 but SEC Rule 15(c)'s. And I wanted these notes. So, so this
4 is an October 23rd email.

5 Scroll down, Mr. Vasek. Please scroll down some more.

6 And, again, the Court can read all this. A lot of this
7 deals with ordinary discovery issues.

8 Stop right there. Scroll down. You have to scroll up
9 now. Okay. Stop right there.

10 Okay. So this is Mr. Morris writing to me: We also
11 expect to produce you the Word versions of each of the notes
12 in advance of the depositions.

13 And here, the depositions we're talking about are those of
14 Mr. Klos and Ms. Hendrix.

15 Please let us know whether we'll challenge the
16 authenticity, et cetera. Highland has a potential expert, if
17 needed, et cetera. And then you'll see Mr. Morris continues:
18 Davor, based on Highland's willingness to produce the Word
19 versions of the notes, please confirm that HCMFA and NexPoint
20 will produce those -- those 15(c) response.

21 So, again, this -- this is -- this is reflective of our
22 October 23rd agreement to produce these documents to each
23 other, remembering that I requested these notes in May. And,
24 really, I don't understand why the Debtor would have not
25 produced those right away with all metadata.

1 And then Mr. Vasek, if you'll please pull up the October
2 26th email.

3 And this, Your Honor -- and Mr. Morris, almost immediately
4 after that, on October the 25th, sends me an email, copying my
5 associate, with -- with the promissory notes. But Mr. -- I
6 think that Mr. Morris's email system, just like mine, it
7 automatically scrubs metadata from attachments until you --
8 unless you tell it not to.

9 So if you'll scroll up, Mr. Vasek, so this is October the
10 25th. Mr. Morris sends it. My associate tells him, We still
11 don't have the metadata. Please check.

12 Keep scrolling up.

13 And Mr. Morris says, in transit, he will respond. And he
14 did respond. He sent, on October the 26th, the promissory
15 notes in Word with all metadata intact. So Mr. Morris did
16 what he said he would, he got it to us, and we had the
17 originals for the Klos, and far more importantly, the Hendrix
18 deposition.

19 You can close that, Mr. Vasek, please. And pull up one of
20 the notes.

21 So now Mr. Vasek, Your Honor, is going to pull up for you
22 one of the promissory notes in its original Word. And you
23 will see hopefully why this is of importance to me. Only when
24 we got this did we see that these notes are electronically
25 signed.

1 Go ahead and show Her Honor how -- how you can move it
2 around.

3 You see, Your Honor? So these are not even electronically
4 signed in the way that there's all these sophisticated systems
5 that have identification and receipts for when you've signed.
6 This is a picture of Mr. Waterhouse's signature that was
7 affixed to this promissory note.

8 More importantly -- if you'll go the metadata, Mr. Vasek
9 -- and I'm sure Your Honor knows what metadata is. But now,
10 now we see, for the first time, we see that, in fact, this
11 document was created by Strasburger by a lawyer there named
12 Mr. Forsay (phonetic). I don't know how to pronounce that; I
13 apologize. But that Ms. Kristin Hendrix actually modified
14 this document and created the document and printed the
15 document on May 3rd and May 2nd, 2019. In fact, she never
16 printed this document. She just closed it onto the system,
17 affixing Mr. Waterhouse's picture of his -- of his signature.

18 So this is what spurred the motion.

19 You can close this now, Mr. Vasek.

20 So now we know for a fact, Your Honor, that Mr. Waterhouse
21 didn't sign these notes. That's a fact. The only question
22 is, did he authorize Ms. Hendrix to sign the notes for him?
23 And here, the evidence is contradictory. Mr. Waterhouse --
24 you have it in my brief; I can walk you through the appendix
25 -- Mr. Waterhouse says that in May 2019, May 2019, he very

1 rarely authorized anyone to sign anything for him
2 electronically and that it would have been his administrative
3 assistant. He testified that he would not have signed notes
4 like this unless they were approved by the Debtor's legal
5 department with a little piece of paper on the front and a
6 stamp that said, Approved by blah-blah-blah. And he -- he
7 testified that if he were to authorize someone to sign a
8 document for him electronically, that he would have done so by
9 an email.

10 Ms. Hendrix testified the opposite. Ms. Hendrix testified
11 that in May 2019 she was or Mr. Waterhouse was signing almost
12 everything electronically. She testified that these notes
13 would have been created by her or someone in her department,
14 not by the Debtor's legal department. And she testified that,
15 well, she would not have signed the notes for Mr. Waterhouse
16 if he had not authorized her to. But neither she nor Mr.
17 Waterhouse could remember any such authorization. Neither she
18 nor Mr. Waterhouse have any email communication to that
19 effect. And the Debtor has not produced any emails such as
20 Mr. Waterhouse said would exist had he authorized this
21 electronic signature.

22 So it appears that Ms. Hendrix deduced or concluded that
23 she was authorized to sign Mr. Waterhouse's name because Mr.
24 Waterhouse, as part of many people in the accounting group,
25 was copied on emails by which she created these notes. In

1 other words, she's told, transfer money from the Debtor to
2 HCMFA. She does that. Mr. Klos tells her -- Mr. Klos was her
3 boss then -- prepare notes, because that's standard operating
4 procedure. And then when she prepares the notes, she
5 circulates them and copies Mr. Waterhouse. And that's it.
6 From that, she believes that she was authorized to sign his
7 name.

8 Those are questions for the jury. Those are questions for
9 the jury as to whether there is an estoppel issue, whether Ms.
10 Hendrix was right to conclude that she was authorized, whether
11 Mr. Waterhouse, through a course of conduct and pattern, had
12 authorized her. I will just say that I analogize it in my
13 mind with our Local Rules and our practices and procedures. I
14 frequently sign proposed orders for other lawyers, as they do
15 for me, with approval, and we are required to keep an email or
16 fax proof of that.

17 So, where this leaves us is that there is no question Mr.
18 Waterhouse didn't sign the notes. There is a question as to
19 whether he authorized Ms. Hendrix to sign the notes. That's a
20 question for the jury. If in fact he did not sign the notes,
21 there is a material defense under the Uniform Commercial Code
22 that strips the notes of their prima facie validity.

23 We have denied in our prior answer that we signed the
24 notes. That is potentially ambiguous. We deny that we've
25 signed the notes because Mr. Waterhouse didn't sign them in a

1 representative capacity. We now want to more clearly assert
2 that, in fact, the notes were not signed at all, because
3 that's how we read the UCC requirement here.

4 Your Honor, this is a Rule 15 motion. This is not a Rule
5 16 motion. Leave should be freely given unless there's a
6 substantial reason not to. There has been no undue delay.
7 Your Honor can see very clearly that it was not until late
8 October that the notes were produced with metadata. It was
9 not until Mr. Waterhouse was deposed on October 19th that he
10 first raised the issue of, well, it looks like that's my
11 electronic signature. These signatures are too perfect to be
12 made by me. I think he used the word chicken scratch for his
13 writing.

14 So there is no undue delay. I requested these very early
15 in this lawsuit. For whatever reason, they were not produced
16 until late.

17 There is no futility, Your Honor. The Debtor seeks to try
18 the actual merits of the defense. As I've briefed, the Fifth
19 Circuit is very clear. On a Rule 15 motion, you apply a
20 reverse 12(b)(6) analysis. The Court does not look at the
21 merits. The only question is, is the person seeking to amend
22 its answer asserting an affirmative defense that has a basis
23 in law? It's a 12(b)(6) standard, and we have demonstrated
24 both legally that failure to sign a note is a defense and
25 we've demonstrated factually, to the extent that factual

1 demonstration is even required, that there is substantial
2 evidence, although it's disputed, admittedly, that the Debtor
3 -- I'm sorry, that HCMFA did not sign these notes nor
4 authorize their signature. So there is no futility issue,
5 Your Honor.

6 There's no bad faith. There's no dilatory -- there's no
7 -- nothing like that. This is not going to delay any trial.
8 If they want more discovery, they can have it. But Waterhouse
9 and Klos and Hendrix have been deposed about these very, very
10 issues. And they were deposed at length. This is -- but
11 ultimately, whenever trial is going to be, whenever the MSJ
12 rulings are going to be, none of this should have to delay any
13 of that, unless the Debtor wants to delay it.

14 And, again, if the Debtor wants more discovery -- it's
15 suggested it wants discovery of D.C. Sauter and James Dondero
16 and others -- it can have it. But I'm telling you that only
17 Hendrix, who prepared these notes, only Klos, who instructed
18 her to prepare these notes, and only Waterhouse, who allegedly
19 signed them or authorized them to be signed, are relevant, and
20 they have been deposed at length. And by the way, Your
21 Honor, Klos and Hendrix are still employed by the Debtor. The
22 Debtor doesn't need to depose them to get whatever additional
23 information it may need. And Your Honor, so there is no undue
24 prejudice.

25 And Your Honor, finally, there have not been repeated

1 failures to cure prior omissions. Yes, this is our second
2 motion, that is true, but we did not have any cause or
3 reasonable cause to seek such relief before the end of
4 October.

5 And Your Honor, I think that we are entitled to a little
6 bit of understanding here, that it was not until several
7 months after we were sued that we were even allowed to talk to
8 our CFO about this lawsuit. Your Honor has in the record
9 communications from Mr. Seery forbidding Mr. Waterhouse or us
10 -- perfectly rationally so; I'm not here to criticize Mr.
11 Seery -- but he forbade Mr. Waterhouse from discussing these
12 matters with us, and it was not until Mr. Waterhouse was
13 terminated, which would have been in March of this year, and
14 it wasn't until sometime later that we were actually able to
15 talk to our CFO and the person who purportedly signed these
16 notes.

17 So the fact that this is our second motion to amend really
18 should not bear any weight to these issues, especially under
19 the facts of this case.

20 Your Honor, that is both my opening, I guess, and my
21 closing. I have -- I have nothing more except to, I guess,
22 address any issues that Mr. Morris raises. And I'll rest,
23 really, on our appendices and my argumentation.

24 THE COURT: Well, I'll ask you this question, since
25 you said that was your opening and closing: I almost always

1 create a timeline in situations like this. And you said it
2 was several months before your client could talk to Mr.
3 Waterhouse. And my timeline shows that December 3, 2020,
4 Highland made a demand on these notes. And then January 22,
5 2021, this adversary was filed to collect on the notes. And
6 then in February, I don't have the exact date, sometime in
7 February Waterhouse was terminated from the Debtor. And then
8 he said in his 400-page deposition that I read yesterday
9 afternoon March 1st was when he started with Skyview, which
10 obviously serves in the same role that Highland did as far as
11 shared services for HCMFA.

12 So my point is it wasn't really several months, right? It
13 was just about a month --

14 MR. RUKAVINA: Well, I think, Your Honor, --

15 THE COURT: The original answer was filed on March
16 1st, I guess the same day Mr. Waterhouse started with his
17 employment. And so it wasn't really months before your client
18 had access to Mr. Waterhouse, correct?

19 MR. RUKAVINA: I think -- I think Your Honor is
20 correct on a technical reading of that, but Your Honor has to
21 take into context Mr. Sauter's declaration and the facts here
22 that on March 1 all of these employees were being
23 transitioned. Mr. Waterhouse was the CFO. He had a thousand
24 and one things going on, as did my clients, the Advisors here.
25 And yes, of course, having a lawsuit for \$7.4 million filed

1 against you is important, and we took it seriously. We didn't
2 -- we didn't fail to file an answer. But it's not like this
3 lawsuit was first and foremost on Mr. Waterhouse's mind.

4 Mr. Sauter took a little bit of time before he got Mr.
5 Waterhouse's attention. So I would say it was, according to
6 his declaration, would have probably been early April, if
7 memory serves -- I don't have it right in front of me --
8 before he was able to discuss the matters with Mr. Waterhouse,
9 which is why I said it was several months before we were able
10 to really talk to him.

11 THE COURT: Okay. Mr. Morris, your opening
12 statement?

13 OPENING STATEMENT ON BEHALF OF THE PLAINTIFF

14 MR. MORRIS: Good morning, Your Honor. John Morris;
15 Pachulski Stang Ziehl & Jones; for the Reorganized Debtor.

16 Before I get to my prepared remarks, I do want to follow
17 up on the observation you just -- Your Honor just made with
18 respect to timeline. Mr. Rukavina showed the document request
19 that set forth a demand that the Debtor produce the metadata.
20 And if you look at the last exhibit in the Movant's appendix,
21 you will find Highland's response. And as he showed you,
22 Highland objected to the phrase metadata as vague. And that
23 was back in June.

24 No motion to compel, no follow up in the month of July.
25 No motion to compel, no follow up in the month of August. And

1 mind you, this is at a time that Mr. Rukavina has told you
2 that they knew -- they thought that there might be a problem
3 with the notes.

4 So they sit on their hands in July. They sit on their
5 hands in August. They sit on their hands in September. They
6 sit on their hands in the first two weeks of October. And
7 within ten days of the follow up request, we produced the
8 documents.

9 I think it's very important for the Court to consider the
10 almost hundred-day delay between the time the Defendant was
11 specifically told that the Debtor objected to the production
12 of metadata and the time they followed up.

13 I'd also like to put into context the notes in their
14 entirety. These notes were created at a time -- and there is
15 no dispute about this -- that Mr. Dondero controlled both the
16 borrower and the lender. He controlled both Highland as well
17 as the maker of the note. There is no dispute about that.
18 This is not an arm's-length negotiation. This is not a deal
19 between two strangers. These are all people wearing multiple
20 hats, doing multiple things, at the same time, as Mr. Rukavina
21 just said, in the ordinary course of business.

22 And I think it's really important, when Your Honor hears
23 the technicalities that Mr. Rukavina is raising, to put them
24 in the context of who these people are. Because as we've
25 cited in our brief, Mr. Dondero has signed notes on behalf of

1 Mr. Rukavina's clients in exactly the same way. So is Mr.
2 Dondero now personally liable? It's ridiculous.

3 There's also evidence in the record, unobjected to, there
4 are notes in other litigations that have Mr. Waterhouse's
5 electronic signature. Silence from that Defendant. Right?
6 These are all people who were working together under the same
7 roof for the same master. I think the context is very
8 important.

9 Let me spend a moment on the elephant that is not in the
10 room. You do not have any evidence in the form of testimony
11 or a declaration from anybody with personal knowledge. Where
12 is Mr. Dondero's declaration? Where is Mr. Waterhouse's
13 declaration? He is still the treasurer of the Movant. Where
14 is Dustin Norris? Dustin Norris is the executive vice
15 president of the Movant. Instead, we have two lawyers'
16 declarations, two people who have absolutely no personal
17 knowledge of any of the underlying facts.

18 You have a substantive investigation conducted by D.C.
19 Sauter. Mr. Sauter has no official relationship to the
20 Movant. He is not the general counsel. He is not employed by
21 them. He never has been. He simply is the general counsel of
22 NexPoint. And because the Movant is an affiliate of Mr.
23 Dondero's, he was told, do this. And he's doing it. And this
24 is what he did.

25 And we're going to spend a lot of time with Mr. Sauter on

1 what Mr. Waterhouse told him last spring that neither he nor
2 HCMFA told this Court. And he missed the opportunity in the
3 spring and he missed the opportunity again when he submitted a
4 second declaration. And what Mr. Waterhouse told Mr. Sauter
5 that he declined to share with you proves that this is just
6 nonsense.

7 There are three issues that we're going to address today,
8 two specifically with Mr. Sauter: undue delay and futility.
9 And the evidence that we have put into the record goes to both
10 issues. And I'd like to begin just to show you a couple of
11 documents, Your Honor. And the first one would be Exhibit 7,
12 if we can put that on the screen. And scroll down, please.

13 This is the genesis, Your Honor. I think -- wants to
14 know, where did the notes come from? This is the first note
15 that's created. It was created on May 2, 2019. There's no
16 dispute about that. Nor is there any dispute that Highland
17 transferred to HCMFA \$2.4 million on that day. And this is an
18 email from David Klos to Corporate Accounting. There will
19 never be a dispute that the corporate accounting group email
20 included Frank Waterhouse.

21 And Mr. Klos's email, look at the subject: HCMLP to HCMFA
22 Loan. And he instructs a member of his group to send \$2.4
23 million from Highland to HCMFA. And he says, "This is a new
24 interco loan." And he asks Ms. Hendrix or another member of
25 the group to prepare a note for execution.

1 Mr. Water -- there is no dispute again. These are just
2 undisputed facts, Your Honor. Mr. Waterhouse is the treasurer
3 of HCMFA at the same time he's the CFO of Highland. He wears
4 at least those two hats. Those are the only two hats we have
5 to talk about today. He's included on this email because he's
6 in the corporate accounting group. And I agree with Mr.
7 Rukavina: We don't have to resolve today what the discussion
8 between any of these people were, because we know it is an
9 undisputed fact that Frank Waterhouse and therefore HCMFA was
10 told on May 2, 2019 that this \$2.4 million transfer was being
11 treated as a loan and that the accounting group was going to
12 prepare it.

13 Can we go to the next exhibit, please? Number 8?

14 This is the next day. This is the \$5 million loan. And
15 here's another email, this one from Ms. Hendrix. She again
16 sends it to the corporate accounting group. Again, Mr.
17 Waterhouse and therefore HCMFA are told by Ms. Hendrix that
18 there was going to be a new \$5 million loan and that she
19 specifically says, I will paper the loan. HCMFA knew on May
20 3, 2019 that Kristin Hendrix was going to prepare a promissory
21 note to support the transfer of \$5 million from Highland to
22 HCMFA. There is no dispute about any of these facts.

23 If Mr. Waterhouse had any question as to what she or Mr.
24 Klos were doing at this moment in time, if he believed that he
25 hadn't given the instruction, that was his moment to speak up.

1 Well, that was his first in dozens and dozens of moments to
2 speak up. But he didn't.

3 Where is the evidence that Mr. Waterhouse -- because this
4 is all out in the open now. He's still the treasurer of
5 HCMFA. Where's the declaration from Mr. Waterhouse saying, I
6 didn't see that email? It never occurred to me what they were
7 doing. It'll -- there will never be that evidence, Your
8 Honor.

9 So this is just -- this is the beginning. And, again,
10 this -- these emails, these two documents alone establish both
11 undue delay, because here you're on notice that those pesky
12 Highland accounting folks are running amok here and doing
13 something they shouldn't be doing. That's what we're told.
14 They shouldn't have -- this was all a grave mistake. HCMFA
15 knows it. And you know what they do in less than 30 days?
16 They report these notes in their audited financial statements.
17 I don't want to go through all of my evidence right now, but
18 this is just such incredible evidence.

19 If we can go to the next document, which is the Highland
20 audited financial statements, Exhibit 3. And this is dated
21 June 3, 2019. It is literally one month after the notes are
22 executed. And if we can just flip to Page 39, please.

23 Page 39, you may have seen this referenced in our papers,
24 Your Honor, is the Subsequent Events section. I apologize.
25 If we could go just to the top of the section so the Court can

1 see the section of the financial statements. Yeah. Thank
2 you.

3 So, Section 15 is Subsequent Events. And continued on to
4 the next page, it says, "Over the course of 2019 through the
5 report date, HCMFA issued promissory notes to the partnership
6 in the aggregate amount of \$7.4 million." And it notes the
7 interest rate.

8 So this notion of mutual mistake, it's contradicted by the
9 plain and unambiguous words of Highland's audited financial
10 statements. And Mr. Sauter is going to confirm what the Court
11 probably already knows and that Mr. Waterhouse is responsible
12 for the oversight of the completion of the audit.

13 But it wasn't just Highland who disclosed the existence of
14 these notes. HCMFA did it itself.

15 Can we go to Exhibit 6?

16 Now, Your Honor, Exhibit 6 was filed under seal. We're
17 only going to put up the one piece of Exhibit 6 that relates
18 to the notes. So on the screen now is the mirror image of the
19 Subsequent Events section, and this is -- Exhibit 6. This is
20 HCMFA's notes. Again, this audited financial statements, both
21 audited financial statements are audited by
22 PricewaterhouseCoopers at a time when Mr. Dondero is in
23 control of both entities, at a time when Mr. Waterhouse is
24 serving as both the chief financial officer of Highland as
25 well as the treasurer of HCMFA, and HCMFA's audited financial

1 statements also show the recording of these promissory notes.

2 HCMFA knew that the notes existed, and therefore could
3 have and should have began to investigate if they thought
4 those notes were mistakenly created. But they did nothing.
5 There will never be any evidence to explain why HCMFA included
6 the notes in their audited financial statements and did
7 nothing. There will never be an explanation for that.

8 There is so much more, Your Honor, that's set forth in our
9 papers. I'll just summarize that Mr. Waterhouse, wearing both
10 hats, prepared dozens of monthly operating reports that he
11 filed with this Court in which these notes were included as an
12 asset of Highland's bankruptcy estate, that all creditors
13 relied upon those monthly operating reports. The evidence is
14 going to be in the record now that Mr. Dondero was told
15 multiple times that HCMFA owed Highland over \$10 million. I
16 don't have to get into the details here, Your Honor, because
17 we know from the audited financial statements that the only
18 other obligations to Highland were the \$5 plus million in
19 other notes. The only way you get over \$10 million is with
20 these notes.

21 Mr. Dondero -- there will never be any evidence that Mr.
22 Dondero said, hey, how come there's \$10 million of notes
23 there? I thought there was only five. There will never be
24 any evidence that any of the officers of HCMFA said, hey, how
25 come we're reporting to the Retail Board that there's almost

1 \$12 million in obligations to Highland? I thought there was
2 only \$5 million of notes.

3 They actually did that, Your Honor. The Retail Board is a
4 critical piece of evidence here because, as Mr. Norris has
5 testified, it is the reason for the Advisors' existence.
6 These advisory agreements between the Advisors and the retail
7 funds are the reasons the Advisors exist. And they're subject
8 to annual review. And the Retail Board specifically asked the
9 Advisors, how much do you owe on notes?

10 And this has nothing to do with Highland employees at this
11 point. The only people involved in this are HCMFA officers.
12 It's Lauren Thedford, who's the secretary of HCMFA, and it's
13 Frank Waterhouse, who's the treasurer of HCMFA. And you've
14 got Mr. Norris who's copied on the email, and he's the
15 executive vice president. And you've got Justin Post, who is
16 the chief compliance officer. And they're all working --
17 they're Highland employees, including Klos and Kristin
18 Hendrix, frankly, who are copied on this stuff, but they say
19 nothing. This is the Advisors' own officers who are relying
20 on HCMFA's own balance sheet to report to the Retail Board, in
21 response to their specific question, that these notes are
22 valid obligations. And they're going to come to court to you
23 today and say they don't think they were signed properly?
24 Seriously? It's not right.

25 There is no gotcha moment, Your Honor. HCMFA has known

1 for years of the existence of these notes. Mr. Rukavina may
2 be doing his investigation in October. I don't know why it
3 wasn't done in May 2019. I don't know why it wasn't done in
4 June 2019 when the audited financial statements are prepared.
5 I don't know why it's not done in October, November, December
6 of 2019, postpetition, when Mr. Dondero's entities are filing
7 documents with the Bankruptcy Court signed by Mr. Waterhouse
8 that say, these are valid notes. Why aren't they
9 investigating? They're not. They're telling you and all of
10 the interested parties and all of the stakeholders these notes
11 are there.

12 It's not good faith, Your Honor. It's bad faith. And
13 what's worse, and we'll get to it in just a moment, is D.C.
14 Sauter. Mr. Waterhouse told him exactly why the notes were
15 prepared. He told it to him three different ways. And he
16 didn't tell the Court that when he filed his first declaration
17 and he didn't tell the Court that when he filed his second
18 declaration. Instead, what he actually told the Court is that
19 Frank Waterhouse knows little, if -- little, if anything,
20 about these notes. And that's just not true.

21 So let's call Mr. Sauter, let's put his declaration into
22 evidence, and let's see what he has to say about what Mr.
23 Waterhouse actually told him that he never disclosed to the
24 Court.

25 THE COURT: All right. We'll go to the evidence now.

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1 And as I understand, HCMFA is resting on the declaration for
2 the direct testimony. So, Mr. Sauter, I need you to turn on
3 your audio and video so I can swear you in and we'll allow
4 cross-examination. Could you say, "Testing, one, two,"
5 please?

6 MR. SAUTER: Testing, one, two.

7 THE COURT: All right. Are others picking up the
8 video? I don't see it yet, but my device is slower.

9 MR. RUKAVINA: Yes, Your Honor. I see Mr. Sauter.

10 THE COURT: Okay. All right. Could you say
11 "Testing, one, two" one more time, Mr. Sauter?

12 MR. SAUTER: Testing, one, two.

13 THE COURT: All right. Please raise your right hand.
14 Do you solemnly swear or affirm that the declaration as well
15 as the testimony you give today was and will be the truth, the
16 whole truth, and nothing but the truth, so help you God? If
17 so, say, "I do."

18 THE WITNESS: I do.

19 THE COURT: All right. Thank you. Mr. Morris, you
20 may proceed.

21 CROSS-EXAMINATION

22 BY MR. MORRIS:

23 Q Good morning, Mr. Sauter. Can you hear me okay?

24 A Yes, sir.

25 Q Okay. You're an attorney admitted to practice law in the

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1 State of Texas, correct?

2 A Yes, sir.

3 Q And you've held your license for about 20 years; is that
4 right?

5 A Yes, sir.

6 Q And from 2014 through February 2020, you were affiliated
7 with the law firm of Wick Phillips, correct?

8 A Yes, sir.

9 Q And while at Wick Phillips, you provided legal services to
10 NexPoint Advisors and its wholly-owned subsidiaries, correct?

11 A Yes, sir.

12 Q And in February 2020, you left Wick Phillips to become
13 NexPoint's general counsel of real estate, correct?

14 A Not exactly. I was hired at NexPoint. I didn't become
15 general counsel until some point in 2021. I think April,
16 probably.

17 Q Okay. I apologize. But I -- this is difficulty, but I
18 appreciate the clarification, but my question was you became
19 the general counsel of real estate when you first joined
20 NexPoint; is that right?

21 A That's correct.

22 Q Okay. And it wasn't until April or May 2021 that you were
23 promoted to general counsel at NexPoint, correct?

24 A I was appointed general counsel in April or May, yes.

25 Q Okay. And you hold that position today, correct?

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1 A That's correct.

2 Q And you submitted a declaration in support of Highland
3 Capital Management Fund Advisors' motion for leave to amend
4 their answer in this matter, correct?

5 A Yes, sir.

6 Q Okay.

7 MR. MORRIS: Can we put on the screen Docket #83,
8 which is Exhibit 1, Mr. Sauter's declaration?

9 BY MR. MORRIS:

10 Q If you'll recall, Mr. Sauter, when we did this in your
11 declaration, if at any time there's anything you need to see
12 in the document, will you let me know that?

13 A I will.

14 Q Okay. And do you understand that this is the declaration
15 that you filed at the end of November in support of HCMFA's
16 motion for leave to amend its answer?

17 A If that's what you say. I would need to see the date, but
18 --

19 Q Okay.

20 A -- I'll take your --

21 Q Can you see up top?

22 A Yes. Yes, sir. That looks accurate.

23 Q Okay. Who wrote this document?

24 MR. RUKAVINA: Objection, Your Honor. It's attorney-
25 client privilege.

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1 THE COURT: Attorney-client privilege?

2 BY MR. MORRIS:

3 Q Did you write this document, sir?

4 THE COURT: Okay. You can rephrase the question, Mr.
5 Morris.

6 BY MR. MORRIS:

7 Q Did you write this document, sir?

8 A I worked with my attorneys in drafting the document.

9 Q Can you tell me which portions you wrote?

10 A I can't recall exactly which portions I wrote.

11 Q Can you recall any aspect of this document that reflects
12 your personal edits?

13 A I did review and edit the document. I don't recall
14 exactly which portion.

15 Q Okay. Did you receive a draft of the document in the
16 first instance?

17 A Yes, I believe I did.

18 Q And how many -- how many drafts of this document were
19 created before you signed your name to it?

20 A I don't know.

21 Q Was it more than two?

22 A I don't recall. I would think it's probably one.

23 Q Okay.

24 A After my review.

25 Q Okay. So you got the document, you provided some

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1 comments, and then you have the final version. Do I have that
2 right? To the best of your recollection?

3 A That's my recollection. Yes, sir.

4 Q Okay. Can you identify any issue on which you provided
5 substantive comments to your declaration?

6 A I don't recall what those substantive comments were at
7 this time.

8 Q Okay. In Paragraph 2 --

9 MR. MORRIS: If we can go down to Paragraph 2.

10 BY MR. MORRIS:

11 Q Do you see it says, "I am in-house counsel for both HCMFA
12 and NexPoint, and have been since at least January 1, 2001
13 [sic]. Do you see that?

14 A Yes, sir.

15 Q Have I read that accurately?

16 A Yes, sir.

17 Q That's not really a true statement, is it?

18 A I -- I wouldn't have said it if I didn't agree with it.

19 Q You're not the general counsel of HCMFA, are you?

20 A I am not the general counsel of HCMFA.

21 Q In fact, you don't have any official role with HCMFA;
22 isn't that correct?

23 A I do not have any title with HCMFA.

24 Q You're not an employee of HCMFA, correct?

25 A That is correct.

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1 Q And you never have been, right?

2 A That is correct.

3 Q You're not an officer of HCMFA, correct?

4 A That is correct.

5 Q And you never have been; isn't that right?

6 A That is correct.

7 Q You're not compensated by HCMFA, correct?

8 A That is correct.

9 Q And you never have been; isn't that right?

10 A Yes, sir.

11 Q Instead, you just perform work for HCMFA from time to
12 time, as requested. Isn't that right?

13 A That is correct.

14 Q And that's because HCMFA is affiliated with Mr. Dondero,
15 correct?

16 A I suppose that's part of the reason.

17 Q Even though you're not employed -- withdrawn. Even though
18 you're employed by NexPoint, you perform legal services for
19 other entities affiliated with Mr. Dondero whenever called
20 upon, even though you have no formal role. Correct?

21 A That's correct.

22 Q And that's all you're doing here, correct?

23 A That's correct.

24 Q And you admit that for all intents and purposes Mr.
25 Dondero is the controlling person at both NexPoint and HCMFA,

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1 correct?

2 A That's correct.

3 Q You're aware that about a year ago Highland commenced an
4 action against HCMFA to recover under two promissory notes
5 bearing Mr. Waterhouse's signature?

6 A That's correct.

7 Q Okay. You have no personal knowledge about the origin of
8 those promissory notes, correct?

9 A I do not.

10 Q You have no personal -- you had no personal involvement in
11 the TerreStar matters referred to in your declarations,
12 correct?

13 A I did not.

14 Q And that's because you were working at Wick Phillips at
15 the time, right?

16 A That's correct.

17 Q And even though you had no formal affiliation with HCMFA
18 and no knowledge about any of the facts, you were asked to
19 investigate the origin of the notes that are the subject of
20 the lawsuits, correct?

21 A That's correct.

22 Q Who asked you to do that?

23 A Outside counsel asked me to do an investigation and figure
24 out where the notes came from and what they were for.

25 Q Is there any particular reason that you know of that

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1 outside counsel didn't make those inquiries?

2 MR. RUKAVINA: Your Honor, I object to the extent
3 that calls for the attorney-client privilege. I don't know if
4 Mr. Sauter can answer that without invading the privilege.

5 THE COURT: Mr. Sauter, no communications revealed
6 between you and your lawyer. If you can answer without doing
7 that.

8 THE WITNESS: I don't know.

9 BY MR. MORRIS:

10 Q Okay. After completing your investigation, you submitted
11 a declaration in support of HCMFA's first motion for leave to
12 amend, correct?

13 A Yes, sir.

14 Q Okay. And your second declaration that you submitted in
15 support of this motion contains a fair portion of what was in
16 the first declaration; do I have that right?

17 A I believe so.

18 Q Okay. Let's look at your first declaration, if we could.

19 MR. MORRIS: It's -- yeah, there you go. Exhibit 15.
20 And so if we could scroll down a little bit, perhaps, to the
21 date.

22 BY MR. MORRIS:

23 Q Oh, actually, you can see at the top. Do you see it's
24 from May 2021?

25 A Yes, sir.

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1 Q Okay. And is that around the time that you signed your
2 declaration?

3 A I believe so.

4 Q And your declaration set forth the factual basis for
5 HCMFA's motion for leave to amend its answer, correct?

6 A Yes, sir.

7 Q And your declaration describes two phases of your
8 investigation, correct?

9 A I don't recall.

10 Q Well, the first phase took place between the time the
11 complaint was filed and March 1, 2021, when HCMFA filed its
12 first original answer, right?

13 A That's correct.

14 Q Okay. And during that first phase, you spoke with Mr.
15 Dondero, correct?

16 A Yes.

17 Q And Mr. Dondero told you that he couldn't recall the
18 genesis of the notes, correct?

19 A That's my recollection. Yes, sir.

20 Q But he didn't say anything to you that caused you to
21 believe he was unaware of the notes, right?

22 A Not that I recall.

23 Q In fact, when you spoke to him, Mr. Dondero had high-level
24 details concerning the notes. Isn't that right?

25 A I mean, I think he generally knew what the notes were

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1 about, yes.

2 Q And so it's not like he -- it's not like he told you he
3 never heard of the notes? He knew what they were about,
4 right?

5 A He was aware of the notes.

6 Q Okay. And he suggested that you speak with Mr.
7 Waterhouse. Do I have that correct?

8 A That's correct.

9 Q And you did that as part of the second phase of your
10 investigation, correct?

11 A Yes, sir.

12 Q We'll get to that shortly. But your declaration --

13 MR. MORRIS: If we can go to Paragraph 13, please.

14 Okay.

15 BY MR. MORRIS:

16 Q The second sentence of Paragraph 13 says, "I had no
17 knowledge of them since I had not been employed by HCMFA, and
18 the few employees of HCMFA had no knowledge of the notes."
19 Have I read that correctly?

20 A Yes, sir.

21 Q And the people that you're referring to there specifically
22 are Dustin Norris and Jason Post, right?

23 A They actually were not employees of HCMFA. It would have
24 been Joe Sowin. Joe was not aware of the notes. And I can't
25 recall whether I spoke with any other HCMFA employees, but I

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1 did speak with Mr. Norris and Mr. Post about the notes as
2 well.

3 Q Okay. And when you used the phrase the employees at that
4 time you were referring to Norris and Post, correct?

5 A I'm sorry. Can you restate that question?

6 Q Well, you knew Mr. Norris was a vice president of HCMFA;
7 isn't that right?

8 A I believe he was, yes.

9 Q Yeah. And until he recently left, Mr. Post, to the best
10 of your knowledge, was the chief compliance officer for both
11 NexPoint and HCMFA, correct?

12 A Yes, sir.

13 Q Okay. And those two gentlemen told you at that time
14 during Phase I that they didn't know the origin of the notes,
15 correct?

16 A That's correct.

17 Q So, because everybody associated with HCMFA at that time
18 told you you were -- they were unaware of the notes, HCMFA
19 served and filed an answer to the complaint that contained no
20 affirmative defenses; isn't that right?

21 A I don't recall what the -- the answer said, but if you say
22 there were no affirmative defenses, I'll take your word for
23 it.

24 Q Okay. I don't want you to take my word for it. Let's
25 take your word for it.

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1 MR. MORRIS: Can we go to Paragraph 18, please?

2 BY MR. MORRIS:

3 Q Do you see you wrote in your declaration, or somebody
4 wrote in your declaration, "That original answer did not
5 contain any affirmative defenses because, as explained above,
6 no one at HCMFA knew any of the facts that might give rise to
7 an affirmative defense."

8 That's what you wrote, right?

9 A Okay. Yes, you are correct. There were no affirmative
10 defenses asserted in our answer.

11 Q All right. And all of that changed in mid-April 2001
12 [sic]; isn't that right?

13 A Yes, sir.

14 Q And that's because Mr. Waterhouse and other former
15 employees of Highland had migrated over to Skyview so you had
16 access to them, correct?

17 A That's correct.

18 Q So Mr. Seery's instructions about not speaking to
19 Highland's employees in ways that were inimical to Highland's
20 interests and the Court's TRO were no longer impediments to
21 your ability to speak with Mr. Waterhouse, correct?

22 A Yes and no. But for the most part, I would agree with
23 that.

24 Q You could ask them anything in the world you wanted at
25 that time. Is that fair?

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1 A That's not entirely fair.

2 Q Yeah. Is there anything about the notes that you thought
3 you couldn't ask them?

4 A Um, I suppose not. I guess the better question is whether
5 they would be willing to answer.

6 Q I -- okay. Is there any question that Mr. Waterhouse ever
7 refused to answer?

8 A I think he's referred me to his outside counsel when I've
9 asked him questions from time to time.

10 Q Okay. But that never occurred during the period when you
11 were doing your investigation, correct?

12 A I think there may have been some hesitancy from Mr.
13 Waterhouse early on, and I think once he showed that hesitancy
14 -- I try to be respectful of his concerns.

15 MR. MORRIS: Your Honor, I apologize for this, but my
16 transcript is in another room. Can we just -- can you just
17 give me thirty seconds, please?

18 THE COURT: Certainly. Do you literally need thirty
19 seconds, or do we need to take a five-minute break?

20 MR. MORRIS: Hopefully less than thirty.

21 (Pause.)

22 MR. MORRIS: Okay. Can you scroll down to Paragraph
23 19, please? Okay.

24 BY MR. MORRIS:

25 Q So, the last sentence of Paragraph 19, you wrote, "Thus,

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1 as of March 2021, I was able to communicate with most former
2 Debtor employees and to access the books and records of
3 Highland -- of HCMFA without fear of violating any court
4 order."

5 Have I read that correctly?

6 A Yes, sir.

7 Q And there's nothing in your declaration -- there's nothing
8 in either declaration that suggests you were impeded in any
9 way in speaking to Mr. Waterhouse during your investigation in
10 the spring. Correct?

11 A I would say that I wasn't impeded by the court order.
12 That's correct. And, yes, I -- I don't recall anything
13 specific in either declaration that mentions any impediment to
14 my discussions with Mr. Waterhouse.

15 Q There's nothing general in either of your declarations
16 either; isn't that correct?

17 A Yes, sir. I don't think there is.

18 Q Okay. So you didn't think that it was important to tell
19 the Court that there was anything that you were unable to
20 learn from Mr. Waterhouse, correct?

21 A That's fair.

22 Q Okay. And so, with access to Mr. Waterhouse and the other
23 employees and HCMFA's books and records, you conducted the
24 second phase of your investigation, correct?

25 A Yes, sir.

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1 Q And during the second phase, you reviewed certain
2 documents relating to the TerreStar NAV error, correct?

3 A Eventually, yes.

4 Q And specifically, you reviewed three to five documents
5 that included a memo that was submitted to the board of the
6 retail fund as well as maybe some communications with the SEC,
7 correct?

8 A Yes, sir.

9 Q And those are the only documents that you were directed to
10 review, correct?

11 A That's correct.

12 Q And none of those documents stated that Highland was
13 responsible for the NAV error, correct?

14 A That's correct.

15 Q During the two-phased investigation that you conducted,
16 you never saw a document that stated that Highland Capital
17 Management, LP was responsible for the TerreStar NAV error,
18 correct?

19 MR. RUKAVINA: Your Honor, I'll object. This is
20 irrelevant. The only relevance to this motion today is any
21 alleged delay in us asserting the defense that Mr. Waterhouse
22 did not sign the notes. Counsel here is trying to try the
23 underlying merits, which we are not here to do today. It's
24 inappropriate. And frankly, it's trial by ambush. The only
25 issue that Mr. Sauter is presenting evidence on today is that

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1 in April or May Mr. Waterhouse told him that he signed the
2 notes. That should be the only topic of legitimate
3 questioning.

4 THE COURT: I overrule.

5 MR. MORRIS: If I may, Your Honor?

6 THE COURT: I overrule.

7 MR. MORRIS: Oh. Okay.

8 BY MR. MORRIS:

9 Q So, my question, Mr. Sauter, is that during your two-
10 phased investigation you never saw any document that stated
11 that HCMLP was responsible for the TerreStar NAV error,
12 correct?

13 A That's correct. I never saw a document signed by HCMLP
14 that said, we are responsible.

15 Q And so, notwithstanding your review of the first
16 declaration, you didn't tell the Court that there were no
17 documents that corroborated your conclusion that the payment
18 was supposed to be made on account of Highland's culpability
19 in connection with the NAV error, correct?

20 MR. RUKAVINA: Your Honor, objection. That's --
21 that's argumentative and that's not a fair question. Why
22 would he tell the Court something like that? It's an
23 argumentative question, not a question of fact.

24 THE COURT: Mr. Morris?

25 MR. MORRIS: Your Honor?

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1 THE COURT: Go ahead. Response?

2 MR. MORRIS: Yeah. I would say that -- I would say
3 that we have a declaration on the screen, most of which is
4 mimicked in the current declaration on this motion, that
5 discusses in detail his investigation, his review of
6 documents, and his conclusion that the notes were -- were
7 prepared by mistake because the transfer of funds was supposed
8 to be made for the purpose of compensating HCMFA for
9 Highland's error. This goes to everything from futility to
10 credibility.

11 THE COURT: Okay. I overrule the objection.

12 BY MR. MORRIS:

13 Q You never disclosed to the Court that there were no
14 documents that supported your conclusion that the notes were
15 prepared by mistake because the payments were supposed to be a
16 form of compensation, correct?

17 A I don't agree with that statement.

18 Q Can you show me where in your declaration there's a
19 reference to any documents that support your conclusion that
20 the payment was intended to be compensation and not a loan?

21 A Say that again, please.

22 Q We can scroll through your declaration -- withdrawn. Let
23 me start over, Mr. Sauter. The question is whether you ever
24 told the Court that your investigation didn't uncover any
25 documentary -- any document -- withdrawn. The question is

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1 whether, during -- you ever disclosed to the Court whether
2 there was ever any documentary evidence that corroborated your
3 conclusion that the payment was intended as compensation and
4 not a loan.

5 A I'm sorry, I'm having trouble because I think you're
6 asking me to affirmatively state a negative. And if I can
7 expand, I'll tell you why I'm having trouble. If you don't
8 want me to expand, then I won't.

9 Q I appreciate that, Mr. Sauter, and I don't want you to
10 expand. The only question is whether you need to review more
11 of your declaration than is on the screen. The only question
12 is whether you ever told the Court that there were no
13 documents that corroborated your conclusion.

14 A You're asking me to tell you whether there's anything in
15 my declaration that says there's no evidence to support my
16 conclusion, and I'm telling you I would not say that.

17 Q Okay. And that's not my question, so I'm sure that it's
18 my fault, Mr. Sauter, and I apologize.

19 Are you aware of anything in your declaration that
20 discloses to the Court that there is no document, that you
21 uncovered no document that stated that Highland Capital
22 Management was responsible for the TerreStar NAV error?

23 A The only way I can answer it is -- is to answer the
24 question you asked me before, which is I am not aware of any
25 document where HCMLP said, I am responsible for the NAV error.

Sauter - Cross

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1 Q Okay. I appreciate that. And in fact, that was true
2 during the investigation and it's true today, eight months
3 later, correct?

4 A Correct.

5 Q Okay. During the second phase of your investigation, you
6 spoke with Mr. Waterhouse, right?

7 A Yes, sir.

8 Q And you knew that Mr. Waterhouse was the chief financial
9 officer or the treasurer of HCMFA, correct?

10 A Yes, sir.

11 Q And you spoke with a gentleman named Will Mabry. Do I
12 have that right?

13 A Yes, sir.

14 Q And you spoke again with Mr. Norris and Mr. Post.
15 Correct?

16 A Yes, sir.

17 Q And based on those discussions and your review of the
18 three to five documents, you concluded "The notes were signed
19 by Mr. Waterhouse" -- withdrawn.

20 MR. MORRIS: Can we go to Paragraph 22?

21 BY MR. MORRIS:

22 Q You concluded that "The notes were signed by mistake by
23 Waterhouse and without authority from HCMFA." That was your
24 conclusion based on your investigation, correct?

25 A That's correct.

Sauter - Cross

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1 MR. MORRIS: And if we can go to Paragraph 30.

2 BY MR. MORRIS:

3 Q You also wrote in your declaration, towards the bottom,
4 "It therefore appears that Waterhouse prepared the notes for
5 some internal accounting or other purpose."

6 Did I read that correctly?

7 A Yes, sir.

8 Q And that was also part of the conclusions that you reached
9 after conducting this investigation, right?

10 A Yes, sir.

11 Q And you interviewed Mr. Waterhouse three times, correct?

12 A I spoke with him three times, yes.

13 Q And two of those interviews were face-to-face and one was
14 on the phone, correct?

15 A Yes, sir.

16 Q And nobody else participated in those discussions,
17 correct?

18 A Correct.

19 Q And you don't recall taking any notes of those interviews,
20 correct?

21 A I don't.

22 Q And you don't recall sending any emails summarizing your
23 discussions with Mr. Waterhouse, correct?

24 A I would not have sent those to Mr. Waterhouse. I may have
25 sent something to my counsel.

Sauter - Cross

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1 Q Okay.

2 A But I don't recall them.

3 Q You don't recall taking -- you don't recall sending any
4 emails to anybody summarizing your discussions with Mr.
5 Waterhouse, correct?

6 A I don't.

7 Q Okay. You don't recall actually showing the promissory
8 notes to Mr. Waterhouse, do you?

9 A I don't recall. You're correct.

10 Q Okay. But you had the notes with you at the time, right?

11 A I don't know if I had the notes with me at the time. I
12 may have.

13 Q You certainly had access to them; is that fair?

14 A That's fair.

15 Q Nothing prevented you from showing the notes to Mr.
16 Waterhouse, right?

17 A No, sir.

18 Q You never asked Mr. Waterhouse to confirm his signature on
19 the notes, right?

20 A I never presented him with the notes and asked him to
21 confirm that those signatures were his.

22 Q Okay. But if you had, he may have told you right then and
23 there that that was his electronic signature, correct?

24 MR. RUKAVINA: Objection.

25 THE WITNESS: I actually --

Sauter - Cross

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1 MR. RUKAVINA: Objection, Your Honor. Speculation.

2 THE COURT: Overruled.

3 THE WITNESS: I actually asked him whether he signed
4 them and whether they were electronic signatures, and he
5 indicated that he would not have used an electronic signature
6 at that time, so if they were signed they were his signature.

7 BY MR. MORRIS:

8 Q But you didn't show him the notes to let him make the
9 determination as to whether or not the signature was his ink
10 signature or whether it was an electronic signature? He
11 didn't have that opportunity, correct?

12 A I don't recall doing that.

13 Q Okay. And there's no -- but there's no reason you
14 couldn't have done that back in April or May, correct?

15 A I suppose you're correct, yes.

16 Q Okay.

17 MR. MORRIS: Can we flip to the first declaration and
18 go to Paragraph 23?

19 BY MR. MORRIS:

20 Q Okay. So, in the middle of this Paragraph 23, it says --
21 it's referring to Mr. Waterhouse. Do you see that?

22 A Yes, sir.

23 Q And you write, "Although he did not remember many, if any,
24 of the facts concerning -- of the facts and circumstances
25 concerning the HCMFA notes," -- do you see that there?

Sauter - Cross

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1 A Yes, sir.

2 Q That's not accurate, is it?

3 A It's -- it's accurate.

4 Q Mr. Waterhouse remembered a lot about the notes, didn't
5 he?

6 A I suppose that's your opinion. He didn't have a good
7 recollection of the notes and seemed to be guessing at what
8 had happened and why they were executed.

9 Q All right. Let's spend some time looking at what Mr.
10 Waterhouse told you. Even though you did not show him the
11 promissory notes that are at issue, Mr. Waterhouse made it
12 perfectly clear to you that he was fully familiar with the
13 notes, correct?

14 A Actually, in the previous sentence, it says the signatures
15 on the notes looked like they were his, so that would indicate
16 that I did show him copies of the notes and he indicated that
17 those were his signatures.

18 Q That's what it says in this declaration. That's not what
19 it said in your first declaration, correct?

20 A I think --

21 MR. RUKAVINA: That's argumentative. That's a false
22 logical argument, and it's argument. It's not a question. He
23 can -- he can make these arguments in his closing. Why would
24 Mr. Sauter in his first declaration go through every single
25 thing that he did or didn't do?

Sauter - Cross

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1 MR. MORRIS: Your Honor, I'll just ask him --

2 THE COURT: Response?

3 MR. MORRIS: I'll just ask him the -- yeah. I'll
4 just ask him the question again.

5 BY MR. MORRIS:

6 Q At the time of your deposition, you had no recollection of
7 ever showing the promissory notes to Mr. Waterhouse, correct?

8 A I -- it's correct that I don't recall whether I showed him
9 the notes.

10 Q Okay. That's all I needed. Who wrote this declaration?
11 Did you write this declaration?

12 A Isn't -- isn't this the first declaration?

13 Q No. This is the second one. Who wrote the second
14 declaration?

15 A It would have been the same process.

16 Q Where it was presented to you in the initial draft?

17 A Yes, sir.

18 Q And how many -- how many drafts do you recall this one
19 going through? One or more than one?

20 A One, maybe two. I don't recall exactly.

21 Q Can you recall any substantive point in your declaration
22 that you provided a comment on?

23 A I -- I did provide substantive comments. I don't recall
24 exactly what they were.

25 Q Can you identify one?

Sauter - Cross

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1 A I really -- I don't recall.

2 Q Okay. So even though you did not -- you have no
3 recollection of showing the promissory notes to Mr.
4 Waterhouse, Mr. Waterhouse made it perfectly clear to you that
5 he was fully aware of the notes, correct?

6 MR. RUKAVINA: Objection, Your Honor. That assumes
7 facts not in evidence.

8 THE COURT: Overruled.

9 THE WITNESS: Would you repeat the question, Mr.
10 Morris?

11 BY MR. MORRIS:

12 Q Even though you did not show Mr. -- withdrawn. Even
13 though you have no recollection of showing Mr. Waterhouse the
14 notes, he made it clear to you that he knew exactly what you
15 were talking about when you referred to the notes, correct?

16 A Yes, sir.

17 Q The notes were not a surprise to him, right?

18 A No, sir.

19 Q Mr. Waterhouse never told you that he was unaware of the
20 existence of the notes, correct?

21 A No, sir.

22 Q You knew when you signed both of your declarations that
23 Mr. Waterhouse was HCMFA's CEO and/or treasurer at the time
24 his signature was put on the notes, correct?

25 A Yes, sir.

Sauter - Cross

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1 Q Now, notwithstanding your conclusions in your first
2 declaration, Mr. Waterhouse never admitted to signing the
3 notes by mistake, correct?

4 A Meaning he never said that he signed the notes by mistake?

5 Q Correct. He never told you that, right?

6 A Correct.

7 Q And that's why there's no reference in either of your
8 declarations to Mr. Waterhouse admitting that he signed the
9 notes by mistake, correct?

10 A That's right.

11 Q There's nothing in either of your declarations that
12 suggests Mr. Waterhouse didn't sign or authorize the signing
13 of his signature on the notes, correct?

14 A I don't think that that's accurate.

15 Q Mr. Waterhouse did not ever tell you that he's sure he
16 didn't authorize the signing of the notes on his behalf,
17 correct?

18 A He did not.

19 Q And the declaration never says that Mr. Waterhouse
20 admitted to having his signature affixed without authority,
21 correct?

22 A He never said that to me.

23 Q Now, you specifically asked Mr. Waterhouse, who approved
24 the notes and what was the process? Correct?

25 A I did.

Sauter - Cross

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1 Q And this is something that you asked him way back in April
2 or May, right?

3 A That's correct.

4 Q And Mr. Waterhouse was very clear to you back in April or
5 May that he couldn't describe the process. Correct?

6 A That's correct. Correct.

7 Q But he also told you, "The money was transferred, so we
8 signed the notes." Correct?

9 A I don't -- I don't know if those were his exact words, but
10 yes, conceptually, that was his statement.

11 Q And that's how you personally recall his statement,
12 correct?

13 A Yes. I personally recall that he said if the money was
14 transferred there had to be a note to document the transfer of
15 funds.

16 Q You didn't put that in your declaration, correct?

17 A I -- I don't know that I did, but I don't know that I
18 didn't. I don't have my declaration committed to memory.

19 Q I'm sure if it's in there Mr. Rukavina will point it out.

20 So you knew back before HCMFA first sought leave to amend
21 its complaint that Mr. Waterhouse couldn't describe the
22 process by which the notes were created, correct?

23 A That's correct.

24 Q And even though you had no personal knowledge of the
25 circumstances surrounding the creation of the notes, you're

Sauter - Cross

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1 the only person in the world that you know of that told Mr.
2 Waterhouse he made a mistake in signing the notes. Correct?

3 A I'm sorry. Say that again?

4 Q Even though you have no personal knowledge of any of the
5 facts or circumstances surrounding the creation of the notes,
6 you told Mr. Waterhouse that he made a mistake when his
7 signature was put on them. Correct?

8 A I -- I don't think I ever said to Mr. Waterhouse, you made
9 a mistake. I certainly asked him that question.

10 Q Well, you recall during your investigation you told Mr.
11 Waterhouse that he made a mistake, correct?

12 A I -- I asked him whether he made a mistake and whether it
13 had gone through legal and ethical (garbled) analysis.

14 MR. MORRIS: Can we call up Mr. Sauter's deposition
15 transcript? I'm sorry, La Asia, I forget what the deposition
16 -- what the exhibit number is. And go to Page 57. I'm sorry.
17 Page 56 at the bottom.

18 BY MR. MORRIS:

19 Q Mr. Sauter, were you asked these questions and did you
20 give these answers, starting on Page 56, Line 24:

21 "Q Okay. But did you tell him that he made a
22 mistake?

23 "A I think I implied it.

24 "Q Do you have a recollection of actually telling
25 him that he made a mistake?

Sauter - Cross

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1 "A That would be my recollection. Obviously, he
2 disagrees with me."

3 Were you asked those questions and did you give those
4 answers in your deposition?

5 A Yes, sir.

6 Q Okay. And you concluded that Mr. Waterhouse made a
7 mistake, even though you have no personal knowledge of
8 anything that happened in connection with the TerreStar
9 valuation issue. Correct?

10 A That's correct.

11 Q And you concluded that Mr. Waterhouse made a mistake, even
12 though you were not involved in any of the decisions that were
13 made in connection with the TerreStar valuation issue,
14 correct?

15 A I was not involved in the decisions. That's -- that's
16 correct.

17 Q And you concluded that Mr. Waterhouse made a mistake even
18 though you weren't involved and had no responsibility for
19 formulating HCMFA's response to the SEC, correct?

20 A That's correct.

21 Q And you concluded that Mr. Waterhouse made a mistake even
22 though you had no responsibility or involvement in the
23 decision as to how HCMFA was going to fund the NAV losses,
24 correct?

25 A That's correct.

Sauter - Cross

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1 Q And you concluded that Mr. Waterhouse made a mistake even
2 though you had no responsibility or involvement in formulating
3 HCMFA's report to GAF, the fund, the Global Allocation Fund.
4 Correct?

5 A That's correct.

6 Q And, again, despite not having any of that personal
7 knowledge, you told Mr. Waterhouse or you implied that he made
8 a mistake in executing the notes, correct?

9 A That's correct.

10 Q And Mr. Waterhouse obviously disagreed with you. Correct?

11 A That's correct.

12 Q But you didn't inform the Court last spring that you
13 interviewed Mr. Waterhouse, the treasurer of HCMFA, the person
14 whose signature appears on the notes, you didn't tell the
15 Court that Mr. Waterhouse disagreed with your conclusion,
16 correct?

17 A That was -- that would have been supposition on my part,
18 but no, I did not.

19 Q What would be supposition?

20 A Stating that Mr. Waterhouse disagrees with my conclusions.

21 Q He obviously disagreed with your conclusions, correct?

22 Those are your words, correct?

23 A I believe he disagreed with my conclusions, yes.

24 Q But you didn't tell the Court that back in the spring, did
25 you?

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1 A No, sir, I did not.

2 Q And Mr. Waterhouse didn't just disagree with you, did he?

3 A I'm sorry?

4 Q Mr. Waterhouse didn't just disagree with the notion that a
5 mistake was made, correct? He actually told you exactly why
6 the notes were created. Isn't that right?

7 A I -- I don't agree with that.

8 Q During these private interviews that you had with Mr.
9 Waterhouse, Mr. Waterhouse told you exactly why he believed
10 the notes were created, correct?

11 A He told me why he believed the notes were created, yes.

12 Q And so he did, in fact, remember the facts and
13 circumstances concerning the notes, correct?

14 A I would stand by my earlier comment that he told me why he
15 believed the notes were signed. I don't know that his memory
16 of the events is crystal clear.

17 Q But it certainly was his belief, right?

18 A Yes, sir. I would agree with that.

19 Q And he's the person whose signature appears on the notes,
20 correct?

21 A Yes, sir.

22 Q And he was the treasurer of HCMFA at the time the notes
23 were created, correct?

24 A He was.

25 Q Mr. Waterhouse specifically told you, "We transferred the

Sauter - Cross

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1 money so I executed the notes. HCMFA didn't have the money to
2 pay GAF and so we transferred it from HCMLP and I executed the
3 notes." That's what he told you, correct?

4 A Something along those lines, yes.

5 Q That's exactly what he told you, right?

6 A I don't know that that's verbatim, but yes, that's my
7 recollection of what he said.

8 Q And Mr. Waterhouse went even further in describing the
9 facts and circumstances concerning the notes, including an
10 explanation to you of why the notes were prepared. Correct?

11 A Could you expand on that?

12 Q Sure. Mr. Waterhouse specifically told you that the notes
13 were prepared for accounting purposes, right?

14 A That was one of the reasons, yes.

15 Q Uh-huh. And he told you -- it's your specific
16 understanding that both HCMFA and Highland disclosed the
17 existence of the notes to their respective outside auditors
18 within thirty days of their execution, correct?

19 A Yes, sir.

20 Q In fact, it's your understanding that the notes were
21 prepared for the audit, correct?

22 A I -- no, I don't know for certain that they were prepared
23 for the audit. But I don't disagree that they were disclosed
24 to the auditors.

25 MR. MORRIS: Can we go to Page 71, please?

Sauter - Cross

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1 Your Honor, there's an objection that Mr. Rukavina lodged
2 that I would ask the Court to rule on before I examine Mr.
3 Sauter once we put it up on the screen. So, it's Page 71,
4 Lines 4 through 9. Yes.

5 THE COURT: Okay. Overrule the objection.

6 BY MR. MORRIS:

7 Q It's your understanding that the notes were prepared for
8 the audit, correct?

9 A In reading my testimony, yes, I think that's -- that's
10 part of the reason that they were prepared.

11 Q Okay. And -- but you never told the Court that, right?
12 You never told the Court of your understanding as to the
13 purpose of the preparation of the notes?

14 A I don't believe I mentioned the audit in my declaration.
15 No, sir.

16 Q You didn't mention to the Court in either declaration that
17 it was your understanding that the notes were prepared for the
18 audit, correct?

19 A I don't think I mentioned the audits in my declarations.
20 That's -- that's correct.

21 Q Okay. Now, the preparation of the audit, that is right in
22 Mr. Waterhouse's wheelhouse, correct?

23 A Yes, sir.

24 Q You know that Mr. Waterhouse is responsible for overseeing
25 the preparation of HCMFA's audited financial statements,

Sauter - Cross

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1 correct?

2 A Yes, sir.

3 Q And Mr. Waterhouse, the person responsible for the audit,
4 the person whose name appears on the notes, the person who was
5 the treasurer of HCMFA at the time, he specifically told you,
6 quote, if the money was transferred, he had to have a note to
7 go with it. Correct?

8 A Yes. That's what he told me.

9 Q And the money was transferred, correct?

10 A That's my understanding.

11 Q You don't -- you have no reason to believe -- in fact, Mr.
12 Rukavina, if you heard in his opening, acknowledged that the
13 money was transferred, correct?

14 A Yeah. I have no reason to deny that.

15 Q But you did not inform the Court that the person whose
16 signature appears on the notes explained to you the purpose
17 and origin of them, correct?

18 A I believe I did have some explanation for the purpose and
19 origin as it was conveyed to me by Mr. Waterhouse.

20 Q Well, you told the Court in your declaration that's on
21 file right now that Mr. Waterhouse, "did not remember many, if
22 any, of the facts and circumstances concerning the HCMFA
23 notes." Isn't that right?

24 A I believe that's -- that's in my declaration. Yes, sir.

25 Q Okay. And you signed that declaration and you filed it

Sauter - Cross

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1 with the Court, even though you knew that the notes were
2 prepared in connection with the audit, correct?

3 A I believe that's one of the reasons the notes were
4 prepared. Yes, sir.

5 Q There are other statements in your declarations that Mr.
6 Waterhouse also specifically disagreed with, correct?

7 A I don't know that I've ever spoken with Mr. Waterhouse
8 regarding my declaration.

9 Q Okay.

10 MR. MORRIS: If we can go back to the first
11 declaration, Paragraph 30.

12 BY MR. MORRIS:

13 Q Okay. Do you see the third point, towards the end of the
14 paragraph? It says, "It therefore appears that Waterhouse
15 prepared the notes for some internal accounting or other
16 purpose." Do you see that?

17 A Yes, sir.

18 Q And you raised that issue with Mr. Waterhouse, correct?

19 A I'm sorry. We discussed that the notes were prepared
20 because, as I said, the money was transferred and so Mr.
21 Waterhouse was of the opinion, if the money is transferred,
22 there had to be a note.

23 Q Okay. And then the second point that you make, --

24 MR. MORRIS: If we could just go up a little bit.

25 BY MR. MORRIS:

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1 Q It says, "Second, it appears that Mr. Waterhouse assumed
2 incorrectly that the funds being paid by the Debtor were a
3 loan to HCMFA." Did I read that part correctly?

4 A You did.

5 Q And you specifically raised that issue that I just raised
6 with Mr. Waterhouse. Isn't that right?

7 A I did.

8 Q And Mr. Waterhouse would not agree that he made any
9 mistaken assumption, correct?

10 A That's correct.

11 Q Mr. Waterhouse refused to admit that he incorrectly
12 assumed that the funds being paid by the Debtor were a loan to
13 HCMFA. Isn't that right?

14 A I'm sorry, could you say that one more time?

15 Q Mr. Waterhouse refused to admit that he made an incorrect
16 assumption concerning the funds being paid by the Debtor to
17 HCMFA.

18 A Yes, sir. That's correct.

19 Q Okay. And you didn't tell that to the Court in May
20 either, correct?

21 A I did not.

22 Q Let's talk about some things that you didn't cover during
23 your investigation that led you to conclude that Mr.
24 Waterhouse signed the notes by mistake and without authority.
25 You never asked Mr. Waterhouse how Highland treated the notes

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1 on its books and records, correct?

2 A That's correct.

3 Q So when you concluded that the notes were signed based on
4 a mutual mistake, you were unaware that Highland carried the
5 notes at all times as assets on its balance sheet, correct?

6 A That's correct.

7 Q You never asked Mr. Waterhouse how HCMFA treated the notes
8 in its books and records, correct?

9 A That's correct.

10 Q So when you concluded that the notes were signed based on
11 a mutual mistake, you did not know that HCMFA carried those
12 notes at all times as liabilities on its balance sheet,
13 correct?

14 A That's correct.

15 Q We've talked about the audited financial statements, but
16 you never reviewed those as part of your investigation,
17 correct?

18 A That's correct.

19 Q So when you concluded that the notes were mistakenly
20 signed, you were unaware that HCMFA had disclosed the
21 existence of the notes in its own audited financial
22 statements, correct?

23 A That's correct.

24 Q But you know that now, right?

25 A I do know that now.

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1 Q And you can't tell me whether HCMFA made yet another
2 mistake by including the notes in its audited financial
3 statements, correct?

4 A I'm sorry. You said yet another mistake?

5 Q Yeah. You can't tell me that the inclusion of the notes
6 in the audited financial statements was a mistake. Isn't that
7 right?

8 A That -- that's correct. That's not a decision that I
9 make.

10 Q And you would agree that your assertion that the notion
11 that the notes were signed by mistake is contradicted by
12 HCMFA's own audited financial statements, correct?

13 A I would agree that -- that the notes are shown on the
14 audited financial statements without any qualification.

15 Q All right. Let's talk about some other things that -- now
16 that you did know last spring, in addition to the stuff we
17 talked about. In your first declaration, --

18 MR. MORRIS: If we could go to the first declaration,
19 Paragraph 27.

20 BY MR. MORRIS:

21 Q You told the Court that HCMFA accepted responsibility for
22 the NAV error and paid approximately \$5.2 million on February
23 15, 2019. Correct?

24 A Yes, sir.

25 Q But the money used to pay the Global Allocation Fund

Sauter - Cross

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1 didn't come from Highland, did it?

2 A I don't know that.

3 Q Well, the money came from insurance proceeds and HCMFA's
4 funding of their deductible, correct?

5 A I believe that that's what's indicated in the memo that
6 I've read.

7 Q And you read that memo before you submitted your first
8 declaration; isn't that right?

9 A Yes, sir. I believe so.

10 Q And that memo -- and we'll look at it in a moment -- that
11 memo specifically discloses HCMFA's receipt of approximately
12 \$5 million of insurance proceeds in connection with the NAV
13 error, correct?

14 A Yes, sir.

15 Q But you didn't tell the Court that you had a document in
16 your possession that showed that HCMFA received \$5 million in
17 connection with the NAV error, did you?

18 A I did not.

19 Q Instead, you speculated that Highland may have tapped into
20 its insurance. Isn't that right?

21 A Yeah, I -- the fact of the matter is I don't know much
22 about the settlement of the insurance claim.

23 Q Well, but before signing your declaration, you reviewed a
24 document that specifically described how the NAV losses were
25 being financed by HCMFA; isn't that right?

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1 A I don't know that I would say financed, but yes, the NAV
2 losses were being paid by HCMFA to Global Allocation Fund.

3 Yes, sir.

4 Q Okay.

5 MR. MORRIS: Can we put up Exhibit 31?

6 BY MR. MORRIS:

7 Q All right. This is a memo from HCMFA to the board of the
8 Highland Global Allocation Fund dated May 28, 2019. Do you
9 see that?

10 A Yes, sir.

11 Q And what's the memo entitled?

12 A Resolution of the Fund's Net Asset Value Error.

13 Q Okay. And this is one of the three to five memos that you
14 reviewed before signing your first declaration, correct?

15 A Yes, sir.

16 Q And this memo -- in this memo, HCMFA is describing for the
17 board the resolution of the NAV error, correct?

18 A Yes, sir.

19 Q Okay.

20 MR. MORRIS: Before we get to the insurance issue,
21 can we just scroll down to the second paragraph? Okay.

22 BY MR. MORRIS:

23 Q And let me know if I'm reading this correctly. The second
24 paragraph of the memo that HCMFA sent to the board of the
25 Highland Global Allocation Fund says, "The Advisor and

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1 Houlihan Lokey, an independent third-party expert valuation
2 consultant approved by the board, initially determined that
3 the March transactions were non-orderly and should be given
4 zero weighting for purposes of determining fair value. As
5 reflected in the consultation, the Advisor ultimately
6 determined that both March transactions should be classified
7 as orderly. The fair valuation methodology adopted, as
8 addressed in the consultation, weights inputs -- weights
9 inputs and does not reflect last sales transaction pricing
10 exclusively in determining fair value. The orderly
11 determination and adoption of the weighted fair value
12 methodology -- fair value -- fair valuation methodology
13 resulted in NAV errors in the Fund." And they define that as
14 the NAV error.

15 Have I read that correctly?

16 A Yes, sir.

17 Q Okay. Highland Capital Management, LP is not mentioned in
18 that paragraph, correct?

19 A No, sir.

20 Q In fact, there is nothing anywhere in this memo that tells
21 the board that Highland is responsible for the NAV error.
22 Correct?

23 A That's correct.

24 Q But Houlihan Lokey is mentioned, correct?

25 A Yes. Because Houlihan is -- was retained or authorized to

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1 be retained in connection with valuation services by the
2 board.

3 Q Okay. They're a third-party valuation firm, right?

4 A That's correct.

5 Q And they were approved by the board, as you just
6 mentioned, correct?

7 A Yes, sir.

8 Q And it's your understanding that Houlihan Lokey did the
9 valuation of TerreStar, correct?

10 A I think Houlihan Lokey would have had input on TerreStar
11 valuation, but they would have done so in conjunction with the
12 valuation team at Highland.

13 Q It's your understanding that Houlihan Lokey did the
14 valuation of TerreStar, correct?

15 A No, sir. I think Houlihan Lokey would have worked in
16 conjunction with the valuation team at Highland to prepare the
17 valuation.

18 Q Okay.

19 MR. MORRIS: Can we go to Page 87 of Mr. Sauter's
20 transcript, please?

21 THE COURT: Mr. Morris, after you're through with
22 this subject matter, we're going to have to take a break. How
23 much more do you have on this particular line of questioning?

24 MR. MORRIS: I would -- just a moment. And I don't
25 think I have more than ten minutes after that. But I'm happy

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1 to take a break, Your Honor.

2 THE COURT: Okay. Let's take a ten-minute break.

3 And I'll let you all know, I have a 1:30 matter, and it's
4 about ten after 12:00 now. So we need to be thinking about --
5 when we come back, I need to know about how much more we need
6 collectively, okay?

7 MR. MORRIS: Yes, Your Honor.

8 THE CLERK: All rise.

9 (A recess ensued from 12:05 p.m. until 12:15 p.m.)

10 THE CLERK: All rise.

11 THE COURT: All right. Please be seated. All right.
12 We're back on the record in Highland. Mr. Morris, you may
13 proceed with your questions of Mr. Sauter. Mr. Sauter, you're
14 still under oath.

15 MR. MORRIS: All right. And in response to your
16 question, Your Honor, I don't think I'll have more than about
17 ten or twelve minutes. And I don't expect to need more than
18 five or ten minutes in my closing.

19 THE COURT: Okay.

20 BY MR. MORRIS:

21 Q Mr. Sauter, if you could take a look, please, at Page 87,
22 Lines 2 through 9. Were you asked these questions and did you
23 give these answers:

24 "Q Okay. Who's Houlihan Lokey? Do you know who
25 Houlihan Lokey is?

Sauter - Cross

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1 "A It's a third-party valuation firm.

2 "Q Do they have a good reputation?

3 "A Yes.

4 "Q And did they do the valuation of TerreStar?

5 "A That's my understanding.

6 Did you give those answers to those questions, sir?

7 A Yes, sir.

8 Q Okay. And you don't know if anyone's ever suggested that
9 Houlihan Lokey was responsible for the valuation error,
10 correct?

11 A I don't know whether anybody ever suggested that or not.

12 Q And that's because -- and that's because you never asked.
13 Fair?

14 A I suppose that's fair.

15 Q Okay.

16 MR. MORRIS: Now, if we could go back to Exhibit 31,
17 please, that second paragraph.

18 BY MR. MORRIS:

19 Q You would agree with me that the second paragraph, to the
20 best of your knowledge -- withdrawn. You would agree with me
21 that in the second paragraph HCMFA accurately defined NAV
22 error for the GAF board, correct?

23 A Based upon my understanding of the NAV error, yes, I would
24 say that is correct.

25 Q In fact, at the time of your deposition, you had no reason

Sauter - Cross

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1 to believe that HCMFA had inaccurately defined NAV error for
2 the GAF board, correct?

3 A That's correct.

4 Q But when you signed your first declaration, you didn't use
5 HCMFA's definition of NAV error, did you?

6 A I don't recall. I mean, if you could show me, I think
7 that would help me.

8 Q Sure.

9 MR. MORRIS: Can we put back the first declaration
10 and go to Paragraph 25?

11 BY MR. MORRIS:

12 Q In Paragraph 25, you define NAV error as, "The Debtor made
13 a mistake in calculating the NAV."

14 Have I read that correctly?

15 A You did.

16 Q That's pretty different than the way HCMFA described the
17 NAV error in its memo to the GAF board, correct?

18 A I think we're talking about two different things. But
19 yes, I would agree that they are different --

20 Q And you knew --

21 A -- definitions.

22 Q And you knew when you signed this declaration that HCMFA
23 had defined NAV error in the manner set forth in its
24 memorandum to the GAF board, correct?

25 A I suppose so. But, again, I think we're talking about two

Sauter - Cross

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1 different things.

2 Q Okay. You didn't use HCMFA's definition of NAV error in
3 your declaration, correct?

4 A I don't believe I described the nature of the NAV error.
5 No, I did not.

6 Q And you didn't -- you didn't make the Court aware of
7 HCMFA's definition of NAV error at the time you submitted this
8 declaration, correct?

9 A I did not.

10 Q All right. Let's go back to the insurance issue and the
11 source of funding. You wrote in Paragraph 27 of your
12 declaration that the first payment was made in February 2019,
13 correct?

14 MR. MORRIS: We can go back. Yeah. Right there at
15 the bottom.

16 THE WITNESS: Yes. Based upon the records that were
17 available to me, yes, I think that's accurate.

18 BY MR. MORRIS:

19 Q And that was -- that was just over \$5 million, right?

20 A Correct.

21 Q All right. Now let's go back to the memo to the board
22 that you had in your possession at the time you signed your
23 declaration. And if we could look at the second page. This
24 second page is entitled, NAV Error Breakdown and Make Whole
25 Payments. Do you see that?

Sauter - Cross

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1 A Yes, sir.

2 Q And you understand that the first row shows that the total
3 estimated net loss resulting from the NAV error was
4 approximately \$7.44 million, correct?

5 A Yes, sir.

6 Q And you understood that the chart depicts the sources that
7 were going to be called upon to fund the \$7.44 million payment
8 from HCMFA to the GAF, correct?

9 A Yes. That's what it purports to state.

10 Q And you understood before you signed your declaration that
11 the GAF board was told in this chart that about \$5 million of
12 the total loss was being funded through HCMFA's insurance,
13 correct?

14 A I don't know whose insurance it was, but yes, it states
15 that there's \$4.939 million in insurance proceeds.

16 Q Did you ask anybody whose insurance proceeds those were?

17 A I don't recall.

18 Q But this also says that the deductible was paid by the
19 Advisor, correct?

20 A That's what it says. Yes, sir.

21 Q Okay. Does that lead you to conclude that it's the
22 Advisor's insurance? If they were paying the deductible?

23 A Not necessarily.

24 Q Okay. But despite having a document that showed \$5
25 million coming from insurance, you didn't ask anybody about

Sauter - Cross

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1 whose insurance policy that was being tapped, right?

2 A At the time, I did not. No, sir.

3 Q And you never disclosed to the Court, either last spring
4 or in connection with this motion, that there were insurance
5 proceeds of \$5 million that were used to pay about two-thirds
6 of the total net loss for the NAV error, correct?

7 A No, sir.

8 Q You have no reason to believe that the source of the
9 funding of the \$7.44 million was anything other than what's on
10 this page, correct?

11 A No, sir, I don't -- I wouldn't know beyond what's on this
12 page.

13 Q Okay. And this memo was dated at the end of May 2019; is
14 that right?

15 A I'll take your word for it, or you can show me, but --

16 Q Yeah. No problem, Mr. Sauter.

17 MR. MORRIS: Let's go back to the top.

18 BY MR. MORRIS:

19 Q Okay. Do you see it's May 28, 2019?

20 A Yes, sir.

21 Q And that's --

22 A I agree. Yes.

23 Q And that's weeks after Highland's transfer of the \$7.4
24 million, correct?

25 A Yes, sir, I believe so.

Sauter - Cross

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1 Q Okay. But there's nothing in this report to the board
2 that discloses that Highland made any payment towards the
3 funding of the net losses arising from the NAV error, correct?

4 A No, nothing in this document indicates that Highland paid
5 for the net losses, the NAV error.

6 Q And you don't know if HCMFA ever returned the insurance
7 proceeds to the carrier after receiving the \$7.4 million from
8 Highland, correct?

9 A I do not.

10 Q And that's because you never asked, correct?

11 A That -- correct.

12 Q Okay. Now, after completing your investigation last
13 spring, you learned that on May 3, 2019 HCMFA needed another
14 \$5 million for a matter completely unrelated to the NAV error.
15 Correct?

16 A I'm sorry. Say that again?

17 Q After your investigation was completed, you learned that
18 on May 3, 2019 HCMFA needed \$5 million for a purpose
19 completely unrelated to the NAV error, correct?

20 A I can't specify the date, but yes, I did learn that there
21 was a need for additional -- additional funding.

22 Q And in fact, Mr. Norris told you that Highland transferred
23 \$5 million on May 3, 2019 because HCMFA needed that money to
24 pay what is known as a consent fee. Correct?

25 A Again, I'm not sure about the exact dates, but yes, that's

Sauter - Cross

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1 correct.

2 Q Your declaration -- neither of your declarations disclose
3 anything about the \$5 million consent fee that Mr. Norris told
4 you about, correct?

5 A No, sir.

6 Q Neither of your declarations discloses that Mr. Norris
7 specifically told you that the \$5 million transferred by
8 Highland on May 3rd was to enable HCMFA to pay a consent fee,
9 correct?

10 A I don't know that Mr. Norris ever said that to me.

11 Q Well, -- (pause).

12 MR. MORRIS: Can we go to Page 104 of Mr. Sauter's
13 transcript, please?

14 BY MR. MORRIS:

15 Q I'm going to read from Page 104, Line 19, through Page
16 105, Line 6. Sir, were you asked these questions and did you
17 give these answers:

18 "Q During your discussions as part of your
19 investigation with Mr. Norris and Mr. Post and Mr.
20 Dondero and Mr. Waterhouse, did anybody tell you why
21 Highland paid HCMFA \$5 million on May 3, 2019?

22 "A Yes.

23 "Q And why did -- what did they tell you?

24 "A It was a payment for a consent fee.

25 "Q All right. Okay. Who told you that?

Sauter - Cross

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1 "A Mr. Norris."

2 Did you give those questions -- answers to my questions,
3 sir?

4 A You read it correctly.

5 Q Okay. But you never told the Bankruptcy Court what Mr.
6 Norris told you about the -- about the May 3, 2019 payment,
7 correct?

8 A No, sir.

9 Q Before preparing your declaration, you spent time
10 reviewing the Debtor's bankruptcy filings, correct?

11 A Yes, sir.

12 Q And it's your understanding that the documents on the
13 docket are publicly available; is that right?

14 A Yes, sir.

15 Q And based on the documents on the docket, you were aware
16 that throughout the bankruptcy case the Debtor disclosed the
17 HCMFA promissory notes as assets of the bankruptcy estate,
18 correct?

19 A Yes, sir.

20 Q And you'll agree that Highland's view of the notes is
21 reflected in its audited financial statements, its books and
22 records, and its court filings, correct?

23 A Yes, sir.

24 Q One other thing you learned during your investigation is
25 that Mr. Waterhouse expressly told you that he did not prepare

Sauter - Cross

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1 the notes, correct?

2 A That's correct. He said he would not have prepared the
3 notes.

4 Q So you didn't need metadata to know that Mr. Waterhouse
5 didn't prepare the notes because you knew that last spring,
6 correct?

7 A I wouldn't necessarily agree with that statement.

8 Q Well, the metadata may show you who prepared the notes,
9 but you didn't need the metadata to know that it wasn't Mr.
10 Waterhouse, correct?

11 A That is correct.

12 Q And Mr. Waterhouse also specifically told you that no
13 formal process was followed to create the notes, correct?

14 A That's not accurate. Or at least not entirely accurate.

15 Q Mr. Waterhouse told you, in response to your question, he
16 couldn't -- he couldn't describe any process that was filed --
17 followed in creating the notes. Correct?

18 A He couldn't recall specifically what happened, but he told
19 me what he thought would have happened --

20 Q Um, --

21 A -- in the creation of the notes.

22 Q During your conversations with Mr. Waterhouse, he also
23 told you that the legal department was not involved, correct?

24 A That's not accurate.

25 Q Okay.

Sauter - Cross

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1 MR. MORRIS: Can we put up on the screen, please, Mr.
2 Sauter's testimony from Page 63?

3 BY MR. MORRIS:

4 Q I'm reading from Line 12 through -- let's just go to Line
5 3 at Page 64 for the moment.

6 "Q What's the basis for your statement that it
7 appeared the Debtor had no intention that there would
8 be notes or that there would be a loan transaction?

9 "A If you're talking about a \$7.4 million
10 obligation, I would assume there would be a process
11 internally on who was responsible for the payment of
12 the fees for the -- or the expenses for the NAV
13 error. Based on my discussions with Frank
14 Waterhouse, there was no process or the legal
15 department was not involved in making a determination
16 as to whether there should be notes. It was merely a
17 ministerial act that Accounting performed when they
18 transferred the funds to pay GAF."

19 Have I read that correctly?

20 A Yes, sir.

21 Q So you knew, based on your interviews with Mr. Waterhouse
22 last April and May, that Mr. Waterhouse couldn't describe any
23 process for the creation of the notes, correct?

24 A I think you're asking a separate question. So I can't say
25 yes or no to that answer without expanding upon it.

Sauter - Cross

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1 Q Okay. Mr. Waterhouse didn't describe for you any process
2 that was followed for the creation of the notes, correct?

3 A Again, he couldn't tell me the exact process that
4 occurred, but he told me what he thought would have occurred.

5 Q Okay. And during your private conversations with Mr.
6 Waterhouse, he also told you that the legal department was not
7 involved, correct?

8 A That's not accurate.

9 Q Did he tell you that the legal department was involved?

10 A His statement to me was that if the notes were drafted,
11 they would have been drafted by the legal department.

12 Q So when he told you that, did you ever talk to anybody?
13 Did you talk to Mr. Leventon or Mr. Ellington or any of the
14 other lawyers who had migrated? Did you follow up with them,
15 --

16 A Yes, sir.

17 Q -- ask them -- to ask them what they did?

18 A Yes, sir.

19 Q How come you don't mention that anywhere in any of your
20 declarations?

21 A Because that didn't give me any clarity to what -- what
22 transpired with the notes.

23 Q It's not -- sir, as you sit here right now, you don't know
24 whether the legal department is involved in all of the notes
25 that are signed by Mr. Dondero and his affiliates; isn't that

Sauter - Cross

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1 right?

2 A In a note of this size, I would fully expect the legal
3 department to have reviewed and approved a note of -- of this
4 nature.

5 Q And that's just your opinion; isn't that right?

6 A Yes. Based upon having worked at NexPoint for the last
7 three years, yes, sir.

8 Q Yeah. It's your testimony -- but you cannot tell me, as
9 the general counsel of NexPoint, that the law department or
10 the legal department is involved in every note that's executed
11 by one of Highland's affiliates, correct?

12 A I can't say definitively one way or another. That's
13 correct.

14 Q Okay. Thank you very much.

15 MR. MORRIS: Your Honor, I have no further questions.

16 THE COURT: All right. Redirect?

17 MR. RUKAVINA: Yes.

18 Mr. Vasek, please pull up Mr. Waterhouse's deposition
19 transcript. Go to Page 145. Do you want to zoom in a little
20 bit, Julian? Scroll down to the bottom. Okay.

21 REDIRECT EXAMINATION

22 BY MR. RUKAVINA:

23 Q Now, Mr. Sauter, you are familiar with Mr. Waterhouse's
24 deposition transcript?

25 A Actually, I've never read it.

Sauter - Redirect

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1 Q Okay. Well, then this might be interesting to you. So,
2 at the bottom here on 25, I start asking, "Did you ask someone
3 to draft" --

4 MR. RUKAVINA: Please scroll down.

5 BY MR. RUKAVINA:

6 Q -- "draft notes?" And Mr. Waterhouse answers, "I don't
7 specifically ask people to draft notes, really. I mean,
8 again, you know, the legal group at Highland is responsible
9 and has always been responsible for drafting promissory
10 notes."

11 So did you -- did you not know that that's how Mr.
12 Waterhouse testified until today?

13 MR. MORRIS: Objection to the form of the question,
14 Your Honor. He just said that he hasn't read the transcript.

15 THE COURT: Sustained.

16 MR. MORRIS: If Mr. --

17 MR. RUKAVINA: Okay.

18 MR. MORRIS: If Mr. --

19 BY MR. RUKAVINA:

20 Q Well, does what Mr. Waterhouse testified to in this
21 transcript that you haven't read comport almost exactly with
22 what he told you in April or May of that year?

23 A Yes. That's exactly what he told me, is he would not have
24 signed a promissory note if it had not been prepared and
25 signed off by Legal.

Sauter - Redirect

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1 Q Okay.

2 MR. RUKAVINA: And scroll down a little bit more,
3 Julian, please.

4 BY MR. RUKAVINA:

5 Q So, so I ask --

6 MR. RUKAVINA: Sure. We'll go to 22. So I'm asked
7 to re-ask the question, Your Honor. And I ask the question of
8 Mr. Waterhouse: "Sure, Mr. Waterhouse. Based on the practice
9 that you have described in your understanding, do you believe
10 that these notes would have been drafted by someone in the
11 legal department?" And there's an objection from my co-
12 counsel, which I'll withdraw. And Mr. Waterhouse answers yes.

13 BY MR. RUKAVINA:

14 Q Does that also, Mr. Sauter, comport with what Mr.
15 Waterhouse told you when you interviewed him in April or May?

16 MR. MORRIS: Objection to the form of the question,
17 Your Honor. He hasn't seen the transcript. Mr. Rukavina is
18 free to make this argument in his closing, but he shouldn't be
19 crossing his own witness with testimony that his witness has
20 never seen. He's free to make the argument. I'm not trying
21 to preclude him from making the argument. But what I don't
22 want is an evidentiary record created by a witness with no
23 knowledge.

24 MR. RUKAVINA: Your Honor, this transcript is in the
25 record from both of us. And Mr. Morris was given great leeway

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1 to take this witness through all kinds of questions,
2 insinuating that this witness was wrong or that he was
3 fabricating issues. And I think it's perfectly legitimate for
4 me to present him with the actual person's testimony and ask
5 whether that testimony comports with what that person told Mr.
6 Waterhouse earlier in the year.

7 THE COURT: I overrule the objection.

8 BY MR. RUKAVINA:

9 Q Mr. Sauter, you just saw Mr. Waterhouse's answer. Does
10 that answer comport with what Mr. Waterhouse told you last
11 spring about these notes?

12 A Yes, it does.

13 Q Okay. So when you talked in your declarations about Mr.
14 Waterhouse's expectation that things would have gone through
15 Legal, that wasn't just supposition or, I'm sorry, speculation
16 on your part, was it?

17 A No. That's -- that's what he told me would have happened,
18 although he again indicated that he doesn't have any specific
19 recollection of the drafting of the notes or any emails --

20 MR. MORRIS: Your Honor, I renew my objection. Why
21 isn't the witness here? He is an officer of HCMFA. Why isn't
22 he here? I didn't -- I would have had an opportunity now to
23 cross-examine him on these new issues.

24 THE COURT: Okay.

25 MR. RUKAVINA: Your Honor, he's not here because --

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1 MR. MORRIS: So I'm objecting based on the best
2 evidence rule.

3 MR. RUKAVINA: He's not here, Your Honor, because
4 we're not trying the merits of the underlying lawsuit. We're
5 trying the sole question of why we took ten months to assert
6 this defense. That's why I objected earlier when Mr. Morris
7 took this witness on a two-hour trip down cross-examination on
8 irrelevant facts.

9 THE COURT: Okay.

10 MR. RUKAVINA: And I think he's opened the door --

11 THE COURT: I overrule the objection. Continue.

12 MR. RUKAVINA: Thank you.

13 BY MR. RUKAVINA:

14 Q Do you recall my question, sir?

15 A I'm sorry. Could you repeat it?

16 Q Actually, I think you were just answering the question
17 when Mr. Morris objected.

18 MR. RUKAVINA: Mr. Vasek, go to Page -- oh, hold on a
19 sec, Mr. Vasek.

20 BY MR. RUKAVINA:

21 Q Mr. Sauter, when you spoke to Mr. Waterhouse in April or
22 May, did you ask him whether he signed these notes?

23 A I did.

24 Q And what did he say?

25 A He said, if my signature's on it, I would have signed it,

Sauter - Redirect

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1 because at the time I was not using electronic signatures.

2 Q Okay. Thank you.

3 A And he was unequivocal on that.

4 Q Okay.

5 MR. RUKAVINA: Go to Page 139, please, Mr. Vasek.

6 BY MR. RUKAVINA:

7 Q Did you discuss with Mr. Waterhouse whether he would have
8 been -- strike that. Did you discuss with Mr. Waterhouse who
9 in the organization would have had the authority to bind
10 anyone on notes of this size?

11 A I did.

12 Q Okay. How did he respond?

13 A He said that he would not have signed any promissory notes
14 unless they'd been signed off by Legal and signed off by Mr.
15 Dondero.

16 Q Okay. Now, when Mr. Morris was asking you some questions,
17 he asked you about whether you ever told Mr. Waterhouse that
18 he had made a mistake. I think the implication was that, who
19 are you after the fact to tell him that he made a mistake?

20 So, so we'll look very quickly here on Page 139. I'm asking
21 Mr. Waterhouse, I apologize if I asked you this already, but
22 has anyone ever told you at any time that you were not
23 authorized to sign the promissory notes that are the subject
24 of the sentence we're looking at? And you see his answer is,
25 Not that I recall.

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1 MR. RUKAVINA: Yeah. And scroll down a little bit.
2 And Your Honor can read it for herself, but it goes on: Let
3 me ask the question again. Did anybody ever tell you at any
4 time that you made a mistake?

5 Scroll down a little bit.

6 Not that I recall.

7 And I apologize, Your Honor. That was not me asking those
8 questions. That was Mr. Morris asking those questions.

9 BY MR. RUKAVINA:

10 Q So does that refresh your memory, Mr. Sauter, as to
11 whether you actually ever told Mr. Waterhouse that he made a
12 mistake?

13 A Yeah. I -- apparently, I never stated to Mr. Waterhouse
14 that -- that he made a mistake in executing the notes.

15 Q Can you think of any reason why you -- why you would have
16 told him that?

17 A No. I -- I wouldn't.

18 Q Okay.

19 MR. RUKAVINA: Go to Page 317, please, Julian.
20 Scroll down a little bit.

21 Your Honor, actually, we will pull this down. I'll argue
22 it at closing. Go ahead, Mr. Vasek, pull that down, just to
23 hurry this up. Okay. Mr. Vasek, please pull up that SEC
24 memorandum.

25 BY MR. RUKAVINA:

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1 Q Mr. Sauter, are you familiar with this memorandum to the
2 SEC --

3 THE COURT: Can you say for the record what we're
4 looking at, what exhibit?

5 MR. RUKAVINA: Your Honor, yes. I have not
6 introduced this one into evidence yet, so I want him to
7 authenticate it first.

8 THE COURT: Okay.

9 BY MR. RUKAVINA:

10 Q Are you familiar with this document, Mr. Sauter?

11 A I am.

12 Q Okay. Is this a document that you relied on in giving Her
13 Honor your first and your second declarations?

14 A Yes. It's one of the documents I reviewed.

15 Q Okay.

16 MR. RUKAVINA: Your Honor, I'd move to admit this
17 document. I have not filed an exhibit list because, again,
18 we're proceeding with appendices, so I don't know how to
19 describe it. Maybe Rebuttal A.

20 THE COURT: Is it on the docket attached to your
21 appendix?

22 MR. RUKAVINA: No, Your Honor. We'll have to --
23 we'll have to upload it or file it after this hearing.

24 THE COURT: Well, okay. I first ask, do we have an
25 objection to this because it wasn't disclosed?

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1 MR. MORRIS: I do, for that very reason. I don't --
2 I don't understand -- I don't -- I don't understand what's
3 happening. It's his witness. It's his motion. He put forth
4 his evidence. I don't know --

5 MR. RUKAVINA: Your Honor, all that I can say is
6 that, again, this motion relates to whether Mr. Waterhouse
7 signed these notes. Mr. Morris took this witness through
8 question upon question about this NAV error. Mr. Morris did
9 not present -- just as he accuses this witness of not giving
10 the Court all the relevant information -- he has not presented
11 the Court with this relevant information, which is a document
12 where the Debtor's own employees, the Debtor's employees, are
13 saying we are responsible for this NAV error. So I think that
14 it is a proper rebuttal. It's -- I know it's weird to offer
15 an exhibit to rebut my own witness, but this is being done in
16 response to what Mr. Morris was asking him about earlier
17 today.

18 THE COURT: All right. Well, if it really indicates
19 what you --

20 MR. MORRIS: Go ahead.

21 THE COURT: -- say it indicates, then I guess it
22 would be rebuttal evidence. So, --

23 MR. MORRIS: Go right ahead, Your Honor. No -- no
24 objection.

25 THE COURT: Okay. It'll be admitted. And I guess we

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1 need to call this -- we're going to call it HCMFA's R-1 for
2 Rebuttal 1. Okay. File it on the docket that way.

3 MR. RUKAVINA: Thank you, Your Honor.

4 (HCMFA's Rebuttal Exhibit 1 is received into evidence.)

5 THE COURT: Go ahead.

6 MR. RUKAVINA: Scroll down a little bit, Julian,
7 please. Okay. Stop there.

8 BY MR. RUKAVINA:

9 Q So you see, Mr. Sauter, where it says the Advisor
10 representatives, Thomas Surgent, Frank Waterhouse, Jason Post,
11 and Lauren Thedford? Do you see that?

12 A Yes, sir.

13 Q Whose employees were those at that time?

14 A They were all employees of Highland Capital Management,
15 LP.

16 Q Okay.

17 MR. RUKAVINA: Scroll down a little bit more, please.
18 Do you see -- stop there.

19 BY MR. RUKAVINA:

20 Q Do you see where NAV error is defined?

21 A Yes, sir.

22 Q Okay. So obviously it speaks for itself, but define --
23 tell the Judge how you understood NAV error to be defined when
24 you were undertaking your investigation and when you were
25 preparing your declarations.

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1 A In preparing my declaration, I was simply referring to the
2 mistake that occurred. The NAV error resulted from some
3 trades that occurred that I would call, you know, outside of
4 the ordinary course of business or -- or not necessarily at
5 arm's length, and so they were determined to be, quote, non-
6 orderly.

7 I think when the SEC became involved, they made a
8 determination that they believed that the excluded trades were
9 orderly and should have been included in the calculation of
10 the NAV, which ultimately resulted in the NAV error.

11 Q And is it fair to -- or, did the valuation of the
12 underlying fund have -- or its assets have any role in that?

13 A No. It would have been Houlihan Lokey and then the
14 valuation committee and I think the individuals listed above
15 and maybe a few others were on the valuation committee, but
16 it's my understanding that all of the employees on the
17 valuation committee were Highland Capital Management
18 employees.

19 Q Okay.

20 MR. RUKAVINA: Mr. Vasek, please pull up the shared
21 services agreement.

22 Your Honor, this agreement is in the record as part of Mr.
23 Sauter's declaration. This is the HCMFA shared services
24 agreement.

25 BY MR. RUKAVINA:

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1 Q Are you familiar with this document?

2 A Yes, sir.

3 Q Okay. And is this a document that you would have
4 consulted as well in reaching your conclusion?

5 A Yes, sir.

6 Q Okay.

7 MR. RUKAVINA: And if you'll scroll to the bottom two
8 pages, Mr. Vasek.

9 Your Honor, this is Annex A. This shows the services that
10 the Debtor was to be providing.

11 Zoom in a little bit.

12 BY MR. RUKAVINA:

13 Q Do you see Compliance, General Compliance? Do you see
14 that, sir?

15 A Yes, sir.

16 MR. RUKAVINA: And scroll down, Mr. Vasek. The top
17 of the next page.

18 BY MR. RUKAVINA:

19 Q Do you see Valuation Committee? Do you see that, Mr.
20 Sauter?

21 A Yes, sir. Yes, sir.

22 Q Were compliance and valuation committee, as part of your
23 understanding and investigation, did those services have
24 anything to do with the NAV error?

25 A Yes, it does. The Valuation Committee was primarily

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1 responsible for setting the valuation, with the input of
2 Houlihan Lokey, and that's what ultimately resulted in the NAV
3 error.

4 Q Did you discuss this NAV error with Mr. Dondero?

5 A I'm sure I did at some point.

6 Q Okay. Well, did you -- did you discuss with Mr. Dondero
7 why he told Mr. Waterhouse to transfer \$7.4 million to HCMFA?

8 A I did, after the fact, after discussing it with Mr.
9 Waterhouse.

10 Q Okay. And did -- what did Mr. Dondero tell you?

11 A I mean, generally speaking, you know, he wouldn't have
12 been involved in the determination of the NAV error. And, you
13 know, I don't know that he recalled any authorization to
14 execute notes from HCMFA to HCMLP in connection with the --
15 with the NAV error.

16 Q But did he tell you that this was intended by him to be a
17 loan?

18 A I don't know that he ever said that.

19 Q Did he indicate to you any surprise that this was carried
20 as a loan?

21 A I don't know that he would have indicated any surprise. I
22 think he relied upon Accounting and Legal to make these
23 determinations and provide input to him.

24 Q Okay.

25 MR. RUKAVINA: Mr. Vasek, if you'll pull up, please,

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1 the Debtor's -- in the Debtor's appendix, it's Exhibit 59.

2 Zoom in, please. All right.

3 BY MR. RUKAVINA:

4 Q Are you familiar with this document?

5 A Yes, sir.

6 Q And what is this document?

7 A It's a memo from what I call the Advisors and the broker-
8 dealer to the retail funds, the boards of the retail funds.

9 MR. RUKAVINA: Mr. Vasek, can you go to the second
10 page, Question 2, where it says, Response? Okay.

11 BY MR. RUKAVINA:

12 Q So, in the middle there, Mr. Sauter, it says the earliest
13 the note between HCMLP and HCMFA could come due is in May
14 2021. Did I read that correctly?

15 A Yes. Yes, sir.

16 MR. MORRIS: Objection to the form of the question.
17 Have we established any foundation that Mr. Sauter saw this
18 memo in connection with his review of the -- with -- in
19 connection with his investigation?

20 THE COURT: I don't think we have. So, --

21 MR. RUKAVINA: Well, Your Honor, this exhibit --

22 MR. MORRIS: So I object, Your Honor.

23 THE COURT: Sustained.

24 MR. RUKAVINA: Again, Your Honor, I apologize. This
25 is an exhibit introduced by the Debtor in its appendix. Is

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1 the Court telling me that every exhibit in the appendix has to
2 be individually offered and admitted as though it was a trial?

3 THE COURT: Well, I don't know if it was foundation
4 or a personal knowledge objection that was being asserted.
5 Mr. Morris, maybe I was hearing something you weren't saying.

6 MR. MORRIS: Yeah, no, it -- it was both. I mean,
7 Mr. Rukavina is right. We -- we have offered this document
8 into evidence. But there is no -- there is no personal
9 knowledge. Let him, if he can, let him testify that he's ever
10 seen this before.

11 You know, these are leading questions. I haven't been
12 objecting.

13 Again, Mr. Rukavina can make whatever arguments he wants,
14 but I'm very wary about just spoon-feeding them to a witness
15 when there's been absolutely no -- and you'll hear this on my
16 recross, when there's been no foundation established that this
17 witness has any knowledge about this document.

18 THE COURT: Okay. Well, I sustained -- Mr. Rukavina,
19 you're going to have to establish some personal knowledge on
20 the part of the witness before you start questioning him about
21 it.

22 BY MR. RUKAVINA:

23 Q Well, let me ask you this, Mr. Sauter. Obviously, it's
24 our position today that Mr. Waterhouse didn't sign these
25 notes, correct?

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1 A Yes, sir.

2 Q Before we filed this motion, had you seen this document?

3 A I -- I have seen this document. I can't say for certain
4 when I first saw it.

5 Q Do you recall whether -- whether this is one of those
6 documents that you would have reviewed in concluding that
7 perhaps Mr. Waterhouse didn't sign the notes?

8 A I don't recall that.

9 Q Okay.

10 MR. RUKAVINA: Well, let's -- let's try a different
11 exhibit here, Julian. It'll be the Debtor's Exhibit 36.
12 Scroll down a little bit. Zoom in.

13 BY MR. RUKAVINA:

14 Q Have you seen this email exchange? I know you're not on
15 it, but have you seen this email exchange in the course of
16 this litigation?

17 A I -- I don't recall specifically seeing this, the email
18 communication. No, I don't.

19 Q Okay.

20 MR. RUKAVINA: Very well, then, Your Honor. I'll
21 move on and I'll just argue these matters at closing.

22 MR. MORRIS: Just very short recross, Your Honor.

23 THE COURT: All right.

24 MR. RUKAVINA: Oh, I'm not -- I'm not done.

25 THE COURT: Oh, he hasn't passed the witness.

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1 MR. MORRIS: Oh, I apologize.

2 MR. RUKAVINA: Just -- just this exhibit, Your Honor.

3 THE COURT: Okay.

4 MR. RUKAVINA: In light of the Court's --

5 THE COURT: Just for my staff and my planning
6 purposes, how much longer do we think this is going to go?
7 This was a one-hour time estimate, and we're now three hours
8 or so into this. How much longer? Because I have a 1:30
9 docket and other things this afternoon, including a conference
10 call at 3:00 and -- et cetera, et cetera.

11 MR. RUKAVINA: I'm almost done, Your Honor, with this
12 witness. And as I mentioned, I have no other evidence other
13 than what's in my appendix.

14 THE COURT: Okay. I'll take "almost done" to being
15 ten minutes or so.

16 MR. RUKAVINA: Yeah. I'll beat that, Your Honor.

17 Mr. Vasek, please pull up the Sauter -- Mr. Sauter's
18 deposition. Go to Page 63.

19 MR. MORRIS: Your Honor, I don't understand. He's
20 going to cross his own witness with his own transcript when
21 he's -- is he impeaching him?

22 MR. RUKAVINA: No. No. You would not let him answer
23 a question, and I want to ask him to answer the question.

24 MR. MORRIS: Well, why don't you just ask him the
25 question?

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1 MR. RUKAVINA: Please pull up Mr. Sauter's deposition
2 to Page 63.

3 THE COURT: Oh, --

4 MR. MORRIS: I object.

5 THE COURT: -- okay. Well, I object. I sustained
6 the objection. You can use, you know, prior inconsistent
7 statements in a depo or, you know, or a depo to refresh, but
8 you've got the live witness here, so what are we doing?

9 BY MR. RUKAVINA:

10 Q Do you recall, Mr. Sauter, Mr. Morris just a little bit
11 about taking you through your deposition testimony where he
12 was asking you about whether Mr. Waterhouse told you that the
13 note would have to go through Legal or not?

14 A I do.

15 Q Okay. And I believe you testified something like there
16 were two different things that were being discussed there.

17 A Correct.

18 Q Okay. I would like to give it up -- put up the document
19 so you can read it, but we can't do that, so explain why Mr.
20 Morris was wrong in implying that Mr. Waterhouse was telling
21 you about the promissory notes.

22 MR. MORRIS: Objection to the form of the question.

23 MR. RUKAVINA: Well, again, Your Honor, I can't -- I
24 can't present -- he was just asked about this testimony, he
25 said I have an explanation but it's not a yes or no answer,

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1 and I want -- I have the right --

2 THE COURT: Okay. Overruled. He can answer.

3 THE WITNESS: Thank you, Your Honor. There were two
4 issues with the notes. Mr. Waterhouse was adamant that the
5 notes had been prepared by Legal. I worked with Tim Cournoyer
6 and Lauren Thedford. They're both good lawyers, and they
7 would not have prepared a note that listed Mr. Waterhouse
8 individually as the maker on the note. It's an incorrect
9 signature block, and I just didn't believe that they would
10 have done that.

11 But the real issue was whether there was any actual
12 determination of who was responsible for the payment of the
13 NAV error to the GAF, and I asked specifically whether there
14 was a process that involved Mr. Surgent, Mr. Waterhouse, Mr.
15 Dondero, and Mr. Cournoyer in determining who was responsible
16 for that -- that payment.

17 And so those were the two issues. Mr. Waterhouse was
18 adamant that it had gone through Legal. So, yes, he did say
19 it had gone through Legal. But he did not ever say that there
20 was any process in making a determination as to who was
21 responsible for the NAV error vis-à-vis Highland Capital
22 Management and Highland Capital Management Fund Advisors.

23 MR. RUKAVINA: And Mr. Vasek, will you please pull up
24 Page 162 from the Debtor's appendix? It's Appendix 162.
25 There it is. Zoom in a little bit.

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1 BY MR. RUKAVINA:

2 Q Mr. Sauter, you were asked about this email before, the
3 one from Mr. Klos. And do you see, sir, where it says: This
4 is a new interco loan. Kristin, can you or Hailey please prep
5 a note for execution?

6 Do you see that, sir?

7 MR. MORRIS: Object --

8 THE WITNESS: I do.

9 MR. MORRIS: -- to the form of the question, Your
10 Honor. I did not examine this witness with this document. I
11 used it in my opening, but I certainly did not examine this
12 witness with this document.

13 THE COURT: Wait, wait. What is the objection? I do
14 remember this exhibit and him being asked questions.

15 THE WITNESS: Correct.

16 THE COURT: What are you saying?

17 MR. MORRIS: I'm just saying Mr. Rukavina's lead-in,
18 I mean, --

19 MR. RUKAVINA: I might be wrong. I might be wrong.

20 MR. MORRIS: I used -- I used this document in my
21 opening, Your Honor, but this contradicts everything Mr.
22 Sauter has ever said in his life about these matters, and I
23 don't recall ever cross-examining him with this document.

24 THE COURT: Okay.

25 MR. MORRIS: If he's ever seen it before, he can --

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1 he can testify, but --

2 THE COURT: Okay.

3 MR. MORRIS: But I don't think there's any
4 foundation.

5 THE COURT: I don't remember specifically whether it
6 was your opening or in questioning; I just remember seeing it
7 here on my screen. So if you could rephrase the question.

8 MR. RUKAVINA: Sure. No, my only first -- first,
9 just to set up the question, I just asked the witness whether
10 he just read the same thing that I did. I can't imagine that
11 being objectionable.

12 BY MR. RUKAVINA:

13 Q Now, Mr. Sauter, my question is, as a transactional lawyer
14 of over twenty years, what does prepare a note for execution,
15 what does execution mean?

16 MR. MORRIS: Objection to the form of the question.
17 He's not here as an expert. He -- there's no foundation that
18 he ever saw this document. If he had, I think it would be
19 even worse for him --

20 THE COURT: Okay. Sustained.

21 MR. MORRIS: -- than it is right now.

22 THE COURT: Sustained.

23 MR. RUKAVINA: Okay. I'll pass the witness, Your
24 Honor. Thank you.

25 THE COURT: Recross?

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1 MR. MORRIS: Just a couple of very brief questions.

2 THE COURT: Okay.

3 RECROSS-EXAMINATION

4 BY MR. MORRIS:

5 Q Mr. Sauter, you made reference to the shared services
6 agreement before, right?

7 A Yes, sir.

8 Q You didn't describe that as one of the documents you ever
9 reviewed in your deposition, correct?

10 A Perhaps I didn't, but I've reviewed it a number of times.

11 Q And you didn't review it in connection with your
12 investigation, correct?

13 A I actually reviewed it extensively from January until
14 March with the transition of shared services.

15 Q There's no argument in your first declaration that relates
16 to the shared services agreement, correct?

17 A I -- no, I did not mention --

18 MR. RUKAVINA: Objection, Your Honor. Let's put up
19 the -- let's put up the document. I don't remember it being
20 in there. I don't remember it being attached as an exhibit.

21 MR. MORRIS: All right. I stand corrected.

22 THE COURT: Okay.

23 MR. MORRIS: I'll move on. Um, --

24 THE COURT: Do we want to pull it up, or no?

25 MR. MORRIS: No, we'll pass. I'll take Mr.

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1 Rukavina's word for it.

2 BY MR. MORRIS:

3 Q But when you -- when you testified in your deposition, you
4 weren't able to recall having ever looked at that, correct?

5 A I don't know that I was asked that question. I'm a
6 hundred percent certain that I probably reviewed it --

7 Q Okay.

8 A -- a dozen times --

9 Q And --

10 A -- before that declaration.

11 Q And I think you testified that you don't recall, you --
12 based on what Mr. Waterhouse said, you now want to retract
13 your testimony that you told Mr. Waterhouse he made a mistake,
14 correct?

15 A I think my initial statement was it was implied, and I
16 think eventually I said that, yes, I probably said something
17 to him that it was a mistake.

18 Q Okay. So Mr. Waterhouse's transcript didn't refresh your
19 recollection at all? That's what you truly believe, correct?

20 A Truly believe what, sir?

21 Q That he made a mistake. Correct?

22 A I do. Yes.

23 Q And whether implicitly or explicitly, you conveyed that
24 message to Mr. Waterhouse, correct?

25 A That was my view, yes.

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1 Q And it's certainly what you said in your declaration
2 multiple times, correct?

3 A What's that?

4 Q That he made a mistake.

5 A Correct.

6 Q And you said in your declaration multiple times that he
7 signed the notes, correct?

8 A Correct.

9 Q Okay.

10 MR. MORRIS: I have no further questions, Your Honor.

11 THE COURT: All right. Thank you, Mr. Sauter. That
12 concludes your testimony.

13 THE WITNESS: Thank you, Your Honor.

14 (The witness is excused.)

15 THE COURT: What evidence do you all want to have in
16 the record here?

17 MR. RUKAVINA: Well, Your Honor, again, in reliance
18 on the Local Rules, I filed an appendix. I think Your Honor
19 mentioned it's an extensive appendix. It has -- I filed a
20 redacted version, but it's not redacted much. It has the
21 declaration of Mr. Sauter, which has the shared services
22 agreements, an email from Mr. Seery forbidding communications
23 with the Debtor's employees. It has the depositions of Mr.
24 Waterhouse, Hendrix, and Klos. And it has my declaration
25 authenticating certain documents.

1 Then I filed a supplemental declaration on Friday in my
2 reply authenticating certain other documents.

3 I believe that those are part of the record under our
4 Local Rules as being in the appendix, but if they're not then
5 I guess I'll move for their admission.

6 THE COURT: All right. Let's talk about where on the
7 docket they appear.

8 MR. RUKAVINA: Okay. Mr. Vasek might have to help me
9 here. The redacted appendix -- you see, I don't have an ECF
10 number on the top for some reason. Sometimes that happens
11 when I'm downloading documents. Mr. Vasek, maybe you can
12 quickly tell the Court what docket my appendix is at.

13 THE COURT: Okay.

14 MR. VASEK: Sure. It's 87.

15 THE COURT: 86 or 87. The unredacted is 87. Okay.

16 This --

17 MR. VASEK: 87.

18 THE COURT: Say again?

19 MR. VASEK: Yes, Your Honor. 87.

20 THE COURT: Okay. Mr. Morris?

21 MR. RUKAVINA: That's right. I'm remembering now,
22 Your Honor -- yeah. I'm remembering now, Your Honor, that Mr.
23 Morris and I agreed I could file it publicly in unredacted
24 form, so it's 87. And then my supplemental declaration is at
25 112/1.

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1 THE COURT: Okay. Is there any objection to that
2 being in the record, Mr. Morris?

3 MR. MORRIS: Yes, Your Honor. I move to strike from
4 Mr. Sauter's declaration Paragraphs 6 through 10 and 22 to 31
5 as lacking any basis in personal knowledge. Highland
6 otherwise has no objection to the admission into evidence of
7 the balance of the Movant's exhibits.

8 THE COURT: Okay. So --

9 MR. RUKAVINA: Your Honor, I'll --

10 THE COURT: -- all those 800-plus pages attached, you
11 have no objection to?

12 MR. MORRIS: Only -- only if they are described in
13 one of the -- I mean, I can do it that way, Your Honor, if
14 you'll just give me a moment. But, again, we've got -- we've
15 got a witness here who has no personal knowledge of the shared
16 services agreement he's --

17 MR. RUKAVINA: John, can you repeat for me the
18 paragraphs that you mentioned you're objecting to?

19 MR. MORRIS: Yes. 6 through 10 and 22 to 31.

20 (Pause.)

21 MR. RUKAVINA: Is the Court prepared for my response?

22 THE COURT: I'm prepared. I'm looking at it.

23 MR. RUKAVINA: I don't think that 6 through 10
24 matter. The rest does matter because it goes exactly to Mr.
25 Sauter's investigation and the reason for why this motion was

1 not filed until it was filed.

2 So I think that, again, that these are -- these -- this --
3 he doesn't need -- what are we talking about here? Are we
4 talking about the underlying facts, that he does not have
5 personal knowledge of? That's true. These are not offered
6 for the truth of the underlying facts. Or are we talking
7 about his investigation and hence the reason why this motion
8 wasn't filed back in April or May? He does have personal
9 knowledge of that. He does have personal knowledge of what he
10 relied on.

11 THE COURT: Okay. I overrule the objection. I think
12 this goes to weight, not admissibility. So, --

13 MR. MORRIS: All right. I --

14 THE COURT: -- everything is admitted.

15 MR. MORRIS: Just to preserve my record real quick,
16 Your Honor?

17 THE COURT: Okay.

18 MR. MORRIS: I'm sorry. Like, Paragraph 24 is a
19 paraphrase of deposition testimony. Paragraph 26 is a
20 paraphrasing of deposition testimony. It has nothing to do
21 with the investigation. And Highland objects to the inclusion
22 of that stuff in the record.

23 THE COURT: Okay. Again, I think this goes to --

24 MR. RUKAVINA: I don't --

25 THE COURT: -- weight.

1 MR. RUKAVINA: I don't see --

2 THE COURT: I admit it.

3 MR. RUKAVINA: Okay.

4 THE COURT: I admit it. Okay. What else am I going
5 to put in the record here?

6 MR. MORRIS: I think -- I think, subject to that
7 objection -- is the Movant withdrawing Paragraphs 6 through
8 10?

9 MR. RUKAVINA: That's fine.

10 MR. MORRIS: Okay.

11 THE COURT: Okay. Well, --

12 MR. MORRIS: And my -- my --

13 THE COURT: -- then that is excluded.

14 MR. MORRIS: -- other objection will be overruled?

15 THE COURT: I think the only exhibits referenced were
16 the shared services agreements, right, in that bundle of
17 paragraphs?

18 MR. MORRIS: Yes.

19 THE COURT: Okay.

20 (Defendant's exhibits contained in Dockets 87 and 112/1
21 are received into evidence as specified.)

22 THE COURT: So, --

23 MR. MORRIS: And then, Your Honor -- I'm sorry.

24 THE COURT: -- as far as Debtor's exhibits?

25 MR. MORRIS: They appear on Docket #111 as amended by

1 113. They were noted on the witness and exhibit list as
2 Exhibits 1 through 31, although they can also be found on the
3 appendixes at Exhibit 109 -- at Docket #109. And the Debtor
4 would respectfully move into evidence all 31 exhibits
5 appearing on those three docket entries.

6 THE COURT: Any objection?

7 MR. RUKAVINA: Your Honor, so long as it's clear that
8 we're not agreeing that these are admissible at trial and that
9 they're limited to this hearing, no objection.

10 THE COURT: All right.

11 MR. MORRIS: As long as it goes both ways, I'm good
12 with that, Your Honor.

13 MR. RUKAVINA: Yeah. That's fine.

14 THE COURT: With that proviso, --

15 MR. RUKAVINA: I understand.

16 THE COURT: -- they're admitted.

17 (Plaintiff's Exhibits 1 through 31 are received into
18 evidence.)

19 THE COURT: All right. Closing arguments?

20 CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

21 MR. RUKAVINA: I'll be very brief, Your Honor, again.
22 We're here on whether Waterhouse signed the note. We're not
23 here on whether the underlying NAV error occurred. We're not
24 here on whether that's what the money was for. We're here on
25 whether Waterhouse signed the note. He did not. He did not

1 sign the notes and we did not learn that until October the
2 26th of this year.

3 The question of whether the notes were authorized to be
4 signed, guess what, that's all Debtor employees. They messed
5 it up. And now the Debtor wants to blame my client because
6 its own employees can't have a clear trail of where a note is
7 authorized to be signed.

8 So what does the Debtor do? It calls my in-house counsel
9 and spends an hour and a half trying to character-assassinate
10 him, when, again, the only issue is whether Waterhouse signed
11 these notes, which he did not.

12 There was no undue delay. The defense is valid under the
13 law, so it's not futile. The Court cannot try the underlying
14 facts. It's a 12(b)(6) standard. There is no dilatory or bad
15 faith motive.

16 This is a Rule 15 motion. Relief should be freely granted
17 unless there is substantial reason not to grant it. The
18 Debtor has given you no substantial reason to deny this
19 motion. The only reason the Debtor gives you to deny this
20 motion, Your Honor, is its view that our defense has no merit,
21 that the mistake, the mutual mistake defense has no merit.
22 And that cannot be tried in the context of this motion.

23 The only other thing that I've heard today, Your Honor,
24 that has any weight under Rule 15 is Mr. Morris's statement
25 that, well, I objected to your request for this promissory

1 note. I objected to it; therefore, you know, you sat -- I
2 think he said exactly that I sat on my hands and did nothing,
3 and I think he took you through June and July and August and
4 September.

5 But look at that objection, Your Honor. His objection is
6 as follows: The Debtor objects to the extent the term
7 metadata is vague. Subject to the general objections and this
8 objection, the Debtor will conduct a reasonable search for and
9 produce documents responsive to this request.

10 The Debtor never says we're not going to produce that.
11 The Debtor never says the term metadata is vague. The Debtor
12 says that, to the extent it's vague, we object. That's
13 gamesmanship, Your Honor. Don't let them get away with such
14 gamesmanship.

15 If I came here with a motion to compel a day after I got
16 served with this, Your Honor would laugh me out of court and
17 Your Honor would sanction me, because Your Honor would say,
18 well, it's just a form objection to the extent something is
19 vague. And Mr. Morris would come in here and say, oh, whoa,
20 whoa, whoa, whoa, whoa, Davor is completely wrong, of course
21 we're going to -- we're just preserving our rights. We're
22 going to -- we're going to produce this promissory note.

23 Don't let them get away with that after-the-fact
24 gamesmanship. That's not a valid objection. They said they
25 would produce the note with metadata, and they did, in late

1 October. And that's their fault and their fault alone.

2 Your Honor, there is no substantial reason to deny this
3 motion, the one and half hours of cross-examination of my in-
4 house counsel notwithstanding. We ask that you grant this
5 motion. Thank you.

6 THE COURT: All right. Let me ask you a couple of
7 questions that go to the undue delay factor that courts are
8 supposed to consider in this context. I'm looking at May 22,
9 2021, when HCMFA filed its first motion for leave to amend
10 answer. And on May 22nd, Paragraph 1 of that motion states,
11 "Now that the Defendant has access to former employees of the
12 Plaintiff and to various books and records, the Defendant has
13 learned that the notes were unauthorized, represent a mutual
14 mistake, and were never intended as debt, but rather that the
15 Plaintiff was compensating the Defendant for the Plaintiff's
16 own liability to the Defendant for causing a serious valuation
17 error." And then, "Accordingly, we seek leave to assert this
18 affirmative defense," et cetera, et cetera.

19 Paragraph 14 states, "Waterhouse was not authorized to
20 execute the notes on behalf of the Defendant and he was not
21 authorized to lend funds by the Plaintiff."

22 And then we have Paragraph 22, similar: It appears that
23 what happened is that Waterhouse, either for some internal
24 accounting purpose or because funds were flowing from the
25 Plaintiff to the Defendant, believed that some document was

1 necessary or that what was being funded was a loan, so he
2 unilaterally and in mistake prepared and signed the notes. In
3 short, Waterhouse made a mistake. There was no loan. There
4 was no return consideration for the loan. And the notes, if
5 anything, are mutual mistakes. Void.

6 Paragraph 29 says, Waterhouse was CFO of both Debtor and
7 HCMFA at the time he signed the notes.

8 Okay. So the Court grants leave to HCMFA to file the
9 amended answer. The Court ruled on July 2, 2021. The amended
10 answer was filed July 6, 2021. And the amended answer that
11 was filed on July 6, 2021, Paragraph 43: At this time, Frank
12 Waterhouse was the chief financial officer to both the
13 Plaintiff and the Defendant. Waterhouse signed the two
14 promissory notes. He did not sign the notes in any
15 representative capacity for the Defendant. The Defendant did
16 not authorize Waterhouse to sign the notes or to bind the
17 Defendant in any way to the note. Waterhouse made a mistake,
18 da, da, da, in signing the notes.

19 I guess what I'm getting at is I'm seeing that, as early
20 as May, this theory of the case, if you will, had evolved, and
21 it seems like a heck of a long time, five months later, to
22 say, oh, everything we said, yeah, except he didn't even sign
23 the notes. That feels like what we have here.

24 MR. RUKAVINA: Well, Your Honor, respectfully, I
25 disagree. I disagree entirely. Because whether he physically

1 signed the note or whether he was authorized to sign the note
2 are two different things. We've always said he's not
3 authorized to sign the note. We've always said that. And
4 that's going to be perhaps a question of fact. But that's
5 separate from whether he actually signed the note or
6 authorized Ms. Hendrix to sign the note. That was not learned
7 until late October. That is a separate defense under the UCC.
8 And, again, that's -- that flows from him telling Mr. Sauter
9 -- basically; I'm paraphrasing -- well, if it's got my
10 signature, I must have signed it.

11 Not until we saw that these were electronically signed and
12 not until we saw that Ms. Hendrix signed them in late October
13 did we realize that not only was there a mistake all around,
14 but the notes weren't even signed, which makes all the more
15 sense because there was a mistake all around. Even that
16 smoking gun email from Mr. Morris where Mr. Waterhouse is
17 copied that he referenced in his argument, it says, prepare
18 the notes for execution. Well, they were not -- they were not
19 executed.

20 So, respectfully, Your Honor, it is wrong to suggest that
21 we knew or should have known about this failure-to-sign
22 argument in May. That's separate from whether he was
23 authorized to sign.

24 THE COURT: All right. My last question is this.
25 Well, maybe it's my last question. I'm troubled we don't have

1 Mr. Waterhouse here today. As I said in the beginning, this
2 is a very serious motion. And if it's not obvious, the reason
3 why I say it's a very serious motion is basically what you're
4 telling me is that HCMFA and Mr. Waterhouse and maybe Debtor
5 officers and directors -- I think it all boils down to Mr.
6 Waterhouse, really -- they either lied or made a mistake in
7 about 42 filed documents, including audited financial
8 statements, the 15(c) report, and the monthly operating
9 reports. I mean, that's about as serious as it gets, right?
10 And Mr. Waterhouse isn't here to say, look, Judge, here's what
11 happened, to the best of my memory. Here's what happened.
12 Why isn't he here?

13 MR. RUKAVINA: Your Honor, that's two questions and
14 two answers. He's not here because, again, I had understood
15 and the practice was always that we don't have live testimony
16 on motions. If the Court believes that his testimony for
17 whatever reason is necessary, I'll subpoena him.

18 THE COURT: You don't have a declaration. You had
19 800 pages worth of testimony --

20 MR. RUKAVINA: But Your Honor, I had his --

21 THE COURT: -- and documents.

22 MR. RUKAVINA: I had his deposition. I had his eight
23 hours of deposition. What would be better than his deposition
24 cross-examining under oath in which he -- again, and let's --
25 let me make it clear. I am not alleging that he or anyone

1 lied. I am not alleging that Debtor representatives lied. I
2 thought I made it very clear in my motion that all of these
3 mistakes are the result of an initial good faith mistake, a
4 good faith assumption. So, so I think it's very -- and
5 recall, it's in my motion, --

6 THE COURT: But --

7 MR. RUKAVINA: -- recall, Your Honor, --

8 THE COURT: -- the mistake has resulted in dozens of
9 erroneous reports to stakeholders.

10 MR. RUKAVINA: That may be. That may be. You know,
11 but that is -- that is something that the jury will decide
12 whether it's erroneous or not.

13 THE COURT: Well, it may go beyond a jury trial just
14 in this adversary, right? It's pretty serious stuff.

15 MR. RUKAVINA: It -- it is pretty serious stuff, Your
16 Honor. The fact -- but, again, I think -- I think all of us
17 -- and I'm being -- please understand, I'm being very
18 respectful and humble here. I think all of us are going far
19 farther than the narrow actual issue before the Court right
20 now, which is whether Frank Waterhouse signed these notes.
21 All of these issues of mistake, all of these other issues, we
22 don't have evidence on today because we're not trying that
23 today. I'm sure Mr. Waterhouse, Ms. Hendrix, Mr. Klos, they
24 all acted in good faith. I am sure. And as Mr. Klos and as
25 Ms. Hendrix confirmed, over the years they would get hundreds

1 of these notes, hundreds of these transfers. And it was a
2 standard practice to paper them up as a promissory note. And
3 then of course they'd be carried on books and records as
4 promissory notes.

5 The people that made the initial error, by assumption --
6 not by bad faith; by assumption, or misassumption -- would
7 carry it as an asset on the books and records. But only Mr.
8 Dondero and perhaps only Mr. Waterhouse know or could have
9 known what the actual purpose of the \$7.4 million transfers
10 was.

11 And recall, Your Honor, there were two other promissory
12 notes at about the same time in very similar amounts. Those
13 promissory notes are valid. They are valid. But that, that's
14 why I wanted to walk you through -- it's actually been
15 admitted into evidence now -- Mr. Waterhouse's own emails and
16 Mr. Waterhouse's own Rule 15(c) statement -- it's in my reply
17 brief, Your Honor -- when Mr. Waterhouse refers to these notes
18 as the note and where he says -- Your Honor, it's -- this is
19 his language -- the HCMFA note is a demand note. There was an
20 agreement between HCMLP and HCMFA the earliest they could
21 demand is May 2021.

22 I say that because again it's clear that everyone was
23 confused about this. How can the CFO be talking about one
24 note that's not collectable until May 2021, how can he be
25 talking about that unless he truly didn't know about these

1 notes and was confused about them? In good faith? Because
2 his employees, his -- what's the polite word? His subservient
3 employees created these notes based on a mistaken assumption
4 and never gave the notes to him to sign. He never signed
5 them. And when he or Mr. Dondero would see financials
6 disclosing promissory notes payable by HCML -- HCMFA to HCMLP,
7 they would assume that it's those prior notes that had been
8 extended.

9 THE COURT: Okay. Well, --

10 MR. RUKAVINA: That -- that's -- that's how all this
11 -- Mr. Waterhouse is not lying about not having signed these
12 notes. Because we have that. He didn't sign them, the notes.
13 Mr. Waterhouse is not lying, nor is Ms. Hendrix lying, about
14 whether he authorized her to sign these notes for him. No one
15 is lying to the Court. The fact is he didn't sign the notes
16 and the fact is the Debtor has no evidence that he authorized
17 --

18 THE COURT: He didn't -- he didn't ink-sign the
19 notes. But we have --

20 MR. RUKAVINA: Right.

21 THE COURT: -- a dispute, you will acknowledge, about
22 authority.

23 MR. RUKAVINA: Absolutely. That is a -- that is a
24 legitimate bona fide dispute, where I understand that there is
25 evidence against me on that. There's also evidence for me on

1 that.

2 THE COURT: All right. Mr. Morris, your closing?

3 CLOSING ARGUMENT ON BEHALF OF THE PLAINTIFF

4 MR. MORRIS: Your Honor, I think this discussion just
5 highlights the absurdity of all of this. Mr. Rukavina keeps
6 ignoring the overwhelming evidence here of undue delay,
7 futility, and prejudice. These notes were described for the
8 treasurer of HCMFA at the moment they were created. He was
9 told they were being created by the accounting department, he
10 was told that the transactions were being booked as a loan,
11 and he didn't say boo.

12 A month later, they're on HCMFA's audited financial
13 statements. That is the -- the undue delay clock started on
14 May 2nd and May 3rd, 2019. How do you have \$7.5 million of
15 notes sitting on your balance sheet and nobody asks a
16 question? Mr. Rukavina says, oh, they thought they were the
17 old notes. Not possible. It's an assumption that he's
18 making. There's no evidence to support it. And it makes
19 absolutely no sense.

20 How do we know that? Because those prior notes were \$5
21 million. So how come every single time HCMFA's obligations
22 reported to Highland are more than \$10 million? Where's the
23 evidence to explain that? They do it to the Retail Board.
24 Mr. Dondero is personally told multiple times during the case,
25 when he's trying -- with his pot plan, it's more than \$10

1 million. And you're right, Mr. Waterhouse signed monthly
2 operating reports both before and after Mr. Dondero ceded
3 control that had more than \$10 million of assets.

4 For them now to try to run away from that, to try to get
5 to a jury to believe it, is a waste of everybody's time and a
6 waste of everybody's money. They could have conducted this
7 investigation two and half years ago. They could have
8 conducted this investigation in June of '19. They could have
9 conducted the investigation when they were preparing their
10 schedules and their monthly operating reports at the
11 commencement of the case. They could have conducted this
12 investigation in the fall of 2020 when the Retail Board asks
13 the question, tell me all of the notes that you own. And the
14 officers of HCMFA tell them it's more than \$10 million. How
15 are you confusing the old notes when you're telling your
16 patron that there's \$12 million of notes outstanding, and they
17 tell this Bankruptcy Court dozens of times and they tell
18 stakeholders dozens of times?

19 This is not right, Your Honor. It's both undue delay --
20 every single time they sign another document, every single
21 time they tell their auditors, every single time they put it
22 on their balance sheet, every single time they tell the Retail
23 Board is an opportunity to say, hey, wait a minute, why are
24 these notes there? And they never do it.

25 It doesn't even start with Mr. Sauter. All of this

1 happens before Mr. Sauter ever has anything to do with this.

2 Where was the leadership?

3 Mr. Rukavina has the audacity to blame the Debtor's
4 employees? I have news for him. The Debtor's employees were
5 under the direction and control of Mr. Dondero and Mr.
6 Waterhouse at all times when this happened. At all times.

7 This is gaslighting, Your Honor. It is really not right.
8 The prejudice would be overwhelming. Mr. Rukavina says I have
9 the transcript. I didn't know what he was doing. I didn't
10 know he was trying to create some new record of a defense that
11 had never been pleaded. That transcript, I would -- I would
12 welcome the opportunity, and I'm going to have it, we can
13 revisit these issues in the context of the existing defenses,
14 but they shouldn't be -- how many bites at the apple can they
15 get? How many times do they get to try to make it right?
16 They're now trying to convince the Court that they should have
17 the opportunity to do exactly the opposite of what Mr. Sauter
18 found. He wrote in his declaration that he filed under oath
19 with this Court that Mr. Waterhouse signed the notes and that
20 he did so on mistake, and now he wants to say he didn't sign
21 the notes. He never put it in front of Mr. Waterhouse.

22 And all of this is really just -- it's just irrelevant,
23 because the one -- the most important evidence that the Court
24 should consider today, the most important evidence that the
25 Court should consider is that Mr. Waterhouse told Mr. Sauter

1 multiple times why the notes were created.

2 So we can sit here and talk about metadata if you want,
3 but Mr. Sauter knew, he just didn't tell the Court, he knew in
4 April and May that Mr. Waterhouse told him multiple times that
5 he needed the notes to paper the transfer. There's no dispute
6 the transfer was made. He told Mr. Sauter multiple times he
7 needed the notes for the auditors. There's no dispute about
8 why Mr. Waterhouse -- why he knows the notes were created.
9 It's undisputed.

10 And I just want to finish with this notion that somehow,
11 somehow this is my fault. It's offensive. When somebody
12 sends me a document request and I send an objection, you need
13 to follow up. I'm not -- I don't care what you think. You
14 wouldn't -- Mr. Rukavina wouldn't have gotten sanctioned if he
15 made a motion, unless he did it without meet-and-confering.
16 But you know what happened? When they finally got around to
17 asking for the stuff, not in -- not in May, not in June, not
18 in July, not in August, not in September, but within ten days
19 of his asking I produced them.

20 The one piece of evidence that's missing from this whole
21 frolic and detour is one follow up between May and October:
22 Hey, I haven't gotten the metadata. Or, hey, you objected,
23 you said the metadata was vague, what do you mean by that?
24 Can we meet and confer?

25 They dropped the ball, Your Honor, and my client shouldn't

1 have to pay the price for their negligence.

2 I have nothing further.

3 THE COURT: I want to ask another question about
4 prejudice. You know, that's another factor courts are
5 supposed to consider. I know there's this dispute about
6 motion for summary judgment, was it filed before or after this
7 motion to amend answer? And I know the obvious answer you're
8 going to tell me is we're ready to go forward on our motion
9 for summary judgment. If you grant leave to amend, you know,
10 maybe we're going to have to take new discovery, slow down
11 that train.

12 Let me ask you something more -- well, it's nagging at me.
13 I don't know if I want to say it's troubling. If HCMFA's
14 theory of the case is correct that these notes were not
15 supposed to be created, this was not supposed to be a loan,
16 this was a transfer intended to compensate HCMFA for the
17 losses it incurred that were Highland's fault, blah, blah,
18 blah, okay, this happened in May 2019. The bankruptcy was
19 October 2019. To me, that's a -- it's a bombshell morphing of
20 the case, because if that is the reality, then it sets things
21 up for the Plaintiff to argue, well, that was an insider
22 preference, then. Right? I don't know. Am I going down the
23 wrong trail? It seems like the obvious way this would morph.
24 Except, I guess, the 546 deadline for that ran October 19,
25 2021, which, by the way, is when all of this all kind of came

1 out that we went to. And then to say he didn't sign it, null
2 and void notes.

3 Anyway, am I going down a crazy trail here? I guess I'm
4 thinking prejudice to the Debtor. The Debtor has been
5 deprived of the opportunity to assert a preference -- what
6 would seem like an obvious insider preference cause of action
7 if this theory of the case is true. Am I all wet on that?

8 MR. RUKAVINA: Your Honor, I'm not going to say those
9 words. I'm going to say that Your Honor is wrong because the
10 Debtor knew about this defense since May.

11 Now, the primary defense here is that the payment was
12 compensation. Whether Waterhouse signed the notes or not
13 doesn't matter to that defense. That defense has been around
14 since May. Or if I'm -- if I'm wrong, I apologize. It's
15 whenever I filed the motion to amend. We just looked that
16 that motion, and I don't have it in front of me right now.

17 THE COURT: May 22nd.

18 MR. RUKAVINA: My memory was -- May 22nd. Since May
19 22nd, the Debtor has known -- and recall the other cases where
20 other Defendants said, well, the notes were forgivable. And
21 I'm not involved with that, so my knowledge might be a little
22 bit off. But as I understand it, the Court said, okay, well,
23 I'm going to grant you leave to state that the notes are
24 forgivable, but I'm going to grant the Plaintiff leave to
25 assert a 548.

1 As soon -- as soon as I filed this motion here, the Debtor
2 knew that, if I'm right, then these notes are illegitimate and
3 the \$7.4 million in transfers was compensation to a creditor.
4 The Debtor could have likewise said, Judge, as part of giving
5 Mr. Rukavina leave, give us leave to assert an insider
6 preference, and the Court would have certainly granted it.

7 So, and honestly, the thought had not crossed my mind, I
8 doubt it crossed the Debtor's mind, about the potential 546(e)
9 and the 547(b) issues until the Court mentioned them.

10 So I do think that the Court is -- and I don't know,
11 again, what being all wet means, but I think the Court is
12 being a little bit over-paranoid in thinking that somehow the
13 Defendant here delayed to let limitations run. That was
14 absolutely not the case.

15 MR. MORRIS: If I may, Your Honor?

16 THE COURT: You may.

17 MR. MORRIS: Just briefly. This is going to be *part*
18 *deux*. Right? We had litigations for six months, and then we
19 were presented with the condition subsequent defense that all
20 of the obligors instead of HCMFA asserted, and therefore we
21 had to amend our complaint to add new causes of action and we
22 had another three month delay.

23 If they're permitted to do this, we will again have to
24 amend our pleading to assert breach of fiduciary duty causes
25 of action against Mr. Dondero and Mr. Waterhouse, at a

1 minimum. Okay? This is going to open up yet another can of
2 worms.

3 And there is no basis for it. I do not understand how
4 HCMFA has the audacity to run away from notes that they
5 carried on their own balance sheet, that they reported to
6 their own auditors, that they told the Retail Board that they
7 owed, that their treasurer signed and certified to this Court
8 that they were valid obligations for the benefit of the
9 Debtor. I don't understand how they have the audacity to even
10 do this.

11 MR. RUKAVINA: But Your Honor, Your Honor, what Mr.
12 Morris says again goes to the merits of a defense that's been
13 on file since May. If the Court grants the current motion,
14 it's not going to slow down summary judgment proceedings.
15 Whether the note was signed or not does not change the
16 question of whether the note is valid or not, of whether there
17 was a mutual mistake or not.

18 So it's not going to slow down the MSJ proceedings. And,
19 again, the Debtor has had since May to amend its complaint to
20 assert breach of fiduciary duty, to assert insider preference,
21 to assert whatever it wants. Frankly, the Debtor could have
22 sued Mr. Waterhouse, having signed the note. It hasn't.

23 Mr. Morris is arguing that this motion is this qualitative
24 difference in this case. It's not. The qualitative
25 difference was when we asserted our primary affirmative

1 defense in May. And since then, the Debtor has done nothing.

2 MR. MORRIS: I have nothing further, Your Honor.

3 THE COURT: Let me ask you one last question. I
4 think this really is the last one, Mr. Rukavina. Whether I
5 allow the amendment or not, even under the existing amended
6 answer, the fact-finder is going to have to get into details
7 about the shared services agreement, correct?

8 MR. RUKAVINA: I believe so. Yes, Your Honor.

9 THE COURT: So here's something else nagging at me.
10 Back when I did the Report and Recommendation to the District
11 Court on the Motion to Withdraw the Reference -- which I
12 notice from the docket they still have not -- the District
13 Court still has not ruled on. Correct? Is anyone seeing it?
14 I'm not seeing it.

15 MR. MORRIS: Your Honor, I think all four -- I think
16 four out of the five have been signed and approved. I think
17 the only one that has not is the one that was originally in
18 the adversary with Mr. Dondero.

19 THE COURT: Really?

20 MR. RUKAVINA: Your Honor, I think Mr. Morse is
21 right. For some reason, the District Court's orders in some
22 of these adversaries have not been filed on the bankruptcy
23 docket. I don't understand why, but I've had to go to the
24 District Court docket to see the orders.

25 THE COURT: Okay. Well, I'm just getting a little

1 bugged that it was represented to me in the motion to withdraw
2 the reference, which I accepted and put in my report, that not
3 only did the note litigation not have anything to do with the
4 proofs of claim or any claims asserted by HCMFA, but "The
5 proofs of claim involve two wholly separate nonintegrated
6 agreements." That is, the shared service agreement and sub
7 advisory agreement. Any consideration of the notes is
8 irrelevant to proofs of claim. They'd already been
9 disallowed. Here, the Plaintiff's claims arise under a
10 promissory note. The Defendant's disallowed claims arose
11 under separate contracts having nothing to do with the notes.
12 The two sets of claims share no common set of facts, and
13 resolution of one is not necessary legally, factually, or
14 logically to the resolution of the other.

15 Anyway, what my monologue up here is aiming at: I made a
16 representation, HCMFA made a representation that the basis for
17 our claims that we filed in the Bankruptcy Court are these
18 shared services agreements, they have nothing to do with
19 notes, they're not inextricably intertwined, which, you know,
20 you have to find that for there to be constitutional authority
21 to adjudicate a matter.

22 This is kind of not the case, right? As the case has
23 evolved, we actually have -- I mean, I don't know. I don't
24 know when the administrative expense claim is set for trial,
25 but it kind of feels like we're going to get all wrapped up

1 into performance and interpretations under those agreements,
2 just like apparently we are now under the new theory of the
3 case.

4 What do you have to say to that?

5 MR. RUKAVINA: Your Honor, I think, respectfully,
6 Your Honor is wrong. This is not a new theory of the case.
7 This theory of the case was around since May 22nd. The Court
8 entered its Report and Recommendation on July the 8th. The
9 Debtor didn't point out at that time the matter that Your
10 Honor is now thinking should have mattered, and it doesn't
11 matter, because the fact of the shared services agreement is
12 --

13 THE COURT: Well, I'm just, I'm going to split hairs
14 with you on the dates. I had the hearing on the motion to
15 withdraw the reference May 25th. Okay? So I was looking at
16 the original answer at that point in time. And then,
17 actually, you had filed the motion to amend the answer three
18 days before that hearing, on May 22nd, but I didn't have a
19 hearing on that until July, and I think it was agreed at that
20 point.

21 So, my point is, at the point in time that I was thinking
22 about this, hearing the lawyers' arguments, and I think I even
23 announced orally my ruling, and then we just papered it up
24 with the Report and Recommendation, the case hadn't really
25 evolved. And I'm just wondering if that is a problem now.

1 MR. RUKAVINA: Your Honor, I don't -- I don't think
2 it's a problem. If the Debtor wants to try to change those
3 orders, it can. But let me remind Your Honor that under the
4 -- the claim that my client has under the shared services
5 agreement and the claim that the Debtor has going back, which
6 are set for trial reasonably soon, are purely postpetition
7 matters for postpetition amounts. Anything that has to do
8 with the shared services agreement as relates to this
9 adversary proceeding would have related to prepetition
10 actions.

11 Nor is my client seeking a claim under the -- a
12 prepetition claim, a general unsecured claim, against the
13 Debtor for having caused the TerreStar NAV error.

14 So I don't agree with Your Honor that the facts here are
15 inextricably intertwined. There's a promissory note, and the
16 only question is, was the promissory note intended to be a
17 loan or was it intended to be compensation?

18 And yes, the fact-finder will have to understand the
19 existence of the shared services agreement, but the fact-
20 finder will not be asked to construe the shared services
21 agreement. It won't be asked to quantify any monies under the
22 shared services agreement. Again, the only question will be
23 what was the intent, a loan or a compensation?

24 That is not a core matter, especially because all this
25 happened prepetition.

1 MR. MORRIS: If I may, briefly, Your Honor?

2 THE COURT: Okay.

3 MR. MORRIS: The notion that this is not a new theory
4 of the case is mindboggling. If it weren't, there would be no
5 need for a motion.

6 The issue that was presented and that we were prepared to
7 try is whether or not these were loans or compensation. Now
8 we're told that somehow the debt -- the -- HCMFA isn't going
9 to be obligated. Well, let me tell you, if they took our
10 money and Mr. Waterhouse and Mr. Dondero want to take the
11 stand and swear that all of this was a gross mistake and that
12 the two of them, when they were in control, filed dozens of
13 documents with the Court that were wrong, that they should
14 have investigated and they didn't, it will require us to
15 assert new claims for breach of fiduciary duty.

16 I do not know how the person in control of an enterprise
17 and the treasurer and the CFO of a debtor in bankruptcy, I
18 don't know how they can in good faith at this point assert
19 that they -- that the notes are not binding on their company.
20 I just don't know how they can do that. It is an entirely new
21 theory of the case. It will require not just discovery but an
22 amendment of our complaint, because we will go after Mr.
23 Waterhouse, we will go after Mr. Dondero with new claims. And
24 that's part of the prejudice that would result.

25 THE COURT: All right. Well, let me say right off

1 the bat that this went a lot longer than any hearing I have
2 ever had on a Rule 15 motion to amend.

3 My law clerk warned me last Thursday, oh, this is a little
4 bit more involved than maybe you were anticipating, which
5 means I ended up spending a great part of my weekend, among
6 other things, looking at the deposition of Frank Waterhouse,
7 which Mr. Sauter had not reviewed. That alone was 400 pages.
8 That was my Sunday afternoon activity. So that sounds like
9 whining. I suppose it is, a little bit. But my point is this
10 is not your garden-variety motion to amend under Rule 15
11 because never have I had a hearing on such a motion that went
12 on for four hours and that each side submitted 800 pages of
13 evidence. But such is life in this unique case of Highland, I
14 suppose.

15 As I've said a couple of times today, I do consider this a
16 very serious matter, which I suppose is one reason why I
17 indulged so much evidence and argument. Because, again, as I
18 interpret the arguments and what's been presented in the
19 record, the proposed second amended answer would essentially
20 mean HCMFA is arguing that Frank Waterhouse and perhaps others
21 within both the Highland and HCMFA organization either lied or
22 made a \$7.4 million mistake in dozens of reports to interested
23 stakeholders.

24 Again, we have monthly operating reports, signed at least
25 electronically, purportedly, by Frank Waterhouse. We have the

1 15(c) reports. We have audited financial statements. Okay.
2 So that's why I say this is really serious and this was worth
3 indulging a lot of evidence and argument, because, wow, this
4 is really a bombshell. You're saying all of this information
5 that certain individuals floated out there, allowed to be
6 floated out there, had reason to know was floating out there,
7 was erroneous.

8 Shocking to me, but I heard what I heard. And what I
9 heard was somewhat surprising. They didn't have Mr.
10 Waterhouse coming in here saying, as treasurer of HCMFA -- of
11 course, the pleadings at one time said he was CFO -- CFO of
12 Debtor and treasurer of HCMFA, I realize now I, you know, I
13 made a huge mistake. We didn't have him falling on his sword
14 saying that. And in fact, in the 400-page deposition that I
15 spent all Sunday afternoon reading, he's -- I would say the
16 closest he comes to being supportive of this theory that HCMFA
17 is now asserting is "I don't recall," "I don't recall," "I
18 think it would have been this way," "I think this," "I think
19 probably that." But he basically -- again, sophisticated
20 individual, CFO of a billion-dollar company, treasurer of
21 HCMFA, you know, a lot of -- I had a lot of documents that
22 were put in front of me on any daily basis. I just can't
23 recall.

24 The person, the so-called subordinate who would have been
25 responsible, I think it's agreed, for obtaining Frank

1 Waterhouse's authorization to sign the document, she appears,
2 according to what I saw in the appendix, to be a CPA, who was
3 an accounting major, you know, not a first-year administrative
4 assistant.

5 So these are, again, disturbing things to have presented
6 to me, especially when no documents have been shown to me to
7 support the new theory of the case. So, well, I guess you can
8 argue about responsive documents, but I certainly don't have
9 anything in the nature of a compromise and settlement
10 agreement, we agree Highland is liable for this and is
11 therefore compensating, reimbursing HCMFA. We don't have
12 anything of that nature.

13 So, anyway, I think I've made it very clear that I'm very
14 disturbed about the evolving theory of the case. But the
15 issue before me, of course, is Rule 15. And what does the
16 case law say about Rule 15? We all know very well that the
17 Court "should freely give leave when justice so requires."
18 And Rule 15 "evinces a bias in favor of granting leave to
19 amend."

20 The five considerations that the Fifth Circuit has
21 outlined in making this evaluation under Rule 15 is, is there
22 undue delay? Is there bad faith or dilatory motive? Is there
23 a repeated failure to cure deficiencies by previous
24 amendments, undue prejudice to the opposing parties, and
25 futility of the amendment?

1 I cannot help but conclude there is unreasonable, undue
2 delay when I look at this timeline. It's a long timeline.
3 But, again, we have a transaction -- transactions, plural --
4 the notes that were or were not authorized to be signed by Mr.
5 Waterhouse. They were executed May 2nd and May 3rd, or they
6 were purportedly executed May 2nd and May 3rd, 2019. Not
7 forever ago, about five months before the Highland bankruptcy.

8 We had Highland making demand on the notes December 3,
9 2020, saying, pay up by December 11, 2020. It didn't happen.
10 January 22, 2021 was when the adversary was filed to collect
11 on the notes.

12 At some point in February, Mr. Waterhouse and numerous
13 other Highland employees ended their employment or were
14 terminated with Highland. And so, as far as I can tell, even
15 under the terms of prior injunctions of this Court at that
16 point, very shortly after the complaint was filed, HCMFA was
17 free to talk to Mr. Waterhouse as much as they wanted. But in
18 any event, he testified, Mr. Waterhouse, in his deposition
19 that March 1, 2021 he began working at Skyview with the former
20 Highland employees who now were providing services to HCMFA,
21 and that was the same day as the original answer was filed.

22 And then May 22, 2021, HCMFA files its motion to amend its
23 answer with this evolving theory of the case, that these notes
24 were not supposed to be created, a loan was not intended, and
25 questioning irregularities, I think was the word used, with

1 regard to Mr. Waterhouse's signature. And, again, it was not
2 until it looks like October 28th HCMFA told Debtor it will
3 assert a defense of non-signature. And then November 30,
4 2021, the second motion to amend answer was filed.

5 I'm being clear for the Court of Appeals which is no doubt
6 going to look at this one day. I've spent hours looking at
7 this. Okay? Again, not a garden-variety motion to amend
8 under Rule 15. I read a 400-page deposition of Frank
9 Waterhouse. I looked at other items in each 800-page
10 appendix. And under the totality of what has been submitted
11 here, I find undue delay. It is an evolving theory of the
12 case, and I'm not a hundred percent clear on why, when these
13 notes, copies of the notes were attached to the original
14 complaint filed on January 22nd. I mean, the Defendant would
15 have been on notice day one, here are the documents that we're
16 suing under, and yet ten months later they want to argue for
17 the first time he didn't actually sign them. And, again, I
18 guess they're saying he didn't ink-sign them. There still
19 would remain a question, which was raised in the previous
20 amended answer, as far as his authority.

21 So undue delay. I do find prejudice. We're many, many,
22 many, many, many months down the road in what started over a
23 year ago, making a demand under these notes. I've got motions
24 for summary judgment teed up.

25 You know, I'm a little bit troubled, as I said, that I did

1 a Report and Recommendation to the District Court based on a
2 simpler lawsuit, and maybe even under the first amended answer
3 I should be looking at this a little differently.

4 And again, I'm just, I'm thinking out loud on that. I
5 have an old opinion that may or may not be relevant, but it
6 was in a case called *Margaux Ventures* and it dealt with the
7 ability to raise a preference defensively if a preference
8 recipient is making a claim against the estate, and even if
9 the bar date, the 546 bar date has passed for affirmatively
10 filing a preference action. I think that was even an insider
11 preference in *Margaux Ventures*. The Plaintiff can still argue
12 defensively preference liability. And what I can't remember
13 for sure is, in *Margaux Ventures*, if it was an administrative
14 expense claim that the preference target was asserting, or was
15 it a prepetition claim. It might make more sense if it was a
16 prepetition claim.

17 But anyway, all this to say I'm mentioning this because it
18 factors into the undue delay and the prejudice. I mean, the
19 lawsuit is just going to keep morphing. I've already heard
20 that it would morph into a breach of fiduciary duty against
21 Mr. Waterhouse and others, but I think it could morph in other
22 ways. And I've got to go back and look at that *Margaux*
23 *Ventures* case to see if I think this is intertwining -- well,
24 anyway, I don't need to go back and look because I'm denying
25 the motion. But it's just, it's just way too late to make an

1 argument that should have been apparent many months ago if in
2 fact it's a legitimate argument.

3 And I guess the last thing I want to say is having a
4 witness today that is the general counsel for NexPoint,
5 another entity -- not HCMFA, not the Debtor -- someone who
6 didn't have personal knowledge that was contemporaneous with
7 the actions involved, someone who just after the fact for
8 NexPoint goes back and looks at the evidence, this has been a
9 significant factor here for me today. The witness just seems
10 like someone who could not make a compelling case regarding
11 the bona fides, shall we say, of the amendment, which in my
12 mind links to the futility of the amendment.

13 All right. Mr. Morris, please upload an order. And we
14 are adjourned. And for the people on WebEx who are here for
15 the 1:30 hearing, we need a short break. I'll be back in ten
16 minutes.

17 THE CLERK: All rise.

18 MR. MORRIS: Thank you very much.

19 (Proceedings concluded at 2:01 p.m.)

20 --oOo--

21 CERTIFICATE

22 I certify that the foregoing is a correct transcript from the
23 electronic sound recording of the proceedings in the above-entitled matter.

24 **/s/ Kathy Rehling**

01/13/2022

25 _____
Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

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EXHIBIT 220

**ORDER DENYING
DEFENDANT'S SECOND MOTION FOR LEAVE TO AMEND ANSWER**

This matter having come before the Court on the *Defendant's Second Motion for Leave to Amend Answer and Brief in Support Thereof* [Docket No. 82] (the "Motion") filed by Highland Capital Management Fund Advisors, L.P. ("HCMFA"); and this Court having considered (i) the Motion; (ii) *Defendant's Appendix in Support of Second Motion for Leave to Amend Answer* [Docket Nos. 83 and 87] ("Defendant's Appendix")²; (iii) *Highland Capital Management, L.P.'s Response in Opposition to Defendant's Second Motion for Leave to Amend Answer* [Docket No. 107]; (iv) *Highland Capital Management, L.P.'s Memorandum of Law in Opposition to Defendant's Second Motion for Leave to Amend Answer* [Docket No. 108]; (v) the *Appendix in Support of Highland Capital Management, L.P.'s Opposition to Defendant's Second Motion for Leave to Amend Answer* [Docket No. 109] ("Highland's Appendix"); (vi) *Defendant's Reply in Support of Its Second Motion for Leave to Amend Answer* [Docket No. 112]; and (vii) the testimonial and documentary evidence admitted at, and the arguments made during, the January 10, 2022 hearing (the "Hearing")³ on the Motion, including assessing the credibility of Mr. Sauter; and after due deliberation on all of the foregoing, and for the reasons set forth in the record of the Hearing on the Motion, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Motion is **DENIED**.

² At the January 10, 2022 hearing on the Motion, the Court admitted into evidence HCMFA's rebuttal exhibit identified as exhibit no. HCMFA-R1 ("Exhibit HCMFA-R1"). Exhibit HCMFA-R1 appears at docket no. 118 and is deemed to be included in Defendant's Appendix for purposes of any appeal that may be taken of this Order.

³ On January 6, 2022, Highland Capital Management, L.P. ("Highland") filed a witness and exhibit list that (a) included as exhibits all documents that were included in Highland's Appendix, and (b) identified Dennis C. Sauter, Jr. ("Mr. Sauter"), as a witness to be examined at the Hearing. [Docket No. 111] (the "W&E List"). On January 10, 2022, Highland amended its witness and exhibit list to include one document (identified as Exhibit 31) not included in Highland's Appendix ("Exhibit 31"). [Docket No. 113]. During the Hearing, the Court admitted Exhibit 31 into evidence without objection, and Exhibit 31 deemed to be included in Highland's Appendix for purposes of any appeal that may be taken of this Order.

2. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

END OF ORDER